Provided Notes as an Alternative to Juror Notetaking: The Effects of Deliberation & Trial Complexity

by

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Abstract

To improve jurors' ability to understand complex trials and render appropriate verdicts, a number of comprehension aids have been subjected to empirical examination, including preinstruction, notetaking, transcript access and flowcharts. This research has often failed to provide a definitive indication of the relative efficacy of these aids, and there is no consistent approach to their implementation and use in the courtroom (Ogloff, Clough, Goodman-Delahunty, & Young, 2006).

The current series of studies aimed to explore novel approaches by investigating the efficacy of a collection of court-provided materials (provided notes), including some which have been previously exposed to empirical analysis (trial transcript, written copy of judicial instructions and verdict flowcharts) and some new materials (offence criteria and chronology of events). Unlike previous experiments in the area, there was greater focus on combining several jury-aids rather than testing their efficacy in isolation (Ellsworth & Reifman, 2000). This combination of court-prepared jury-aids was expected to provide a balanced and comprehensive presentation of both the facts and the law, allow opportunities for multiple exposure (Bourgeois, Horowitz, & ForsterLee, 1993), and encourage systematic, central route information processing to ultimately enhance juror comprehension of a mock criminal trial (Petty & Cacioppo, 1986).

The 4 experiments in this series employed the jury simulation research paradigm. Participants were exposed to a mock criminal trial presented on a DVD and required to complete a multiple choice questionnaire measuring comprehension of the facts and law of the case while accessing different note types. The first experiment compared the efficacy of jurors' own notes and provided notes, and the second study was designed to justify the inclusion of supplementary court-prepared materials by separating the

remaining components of the provided notes package from the trial transcript component. Experiment 3 focused on the impact of group-work anticipation and the deliberation process itself on participants utilising own or provided notes, and the final study examined the impact of differing dimensions of trial complexity on the comparative utility of own and provided notes.

Taken together, this series of experiments demonstrated that participants were able to make use of a collection of court-prepared provided materials to achieve significantly higher scores on objective measures of fact and law comprehension than participants who utilised notes they had taken themselves. This superiority of provided notes over own notes was firmly established, suggesting that provided notes should be viewed as a potential alternative to jurors' own notes in the ongoing pursuit of improving juror comprehension.

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1.1 Criticisms of the Jury

The jury is an institution often subjected to intense critical scrutiny (Flango, 1980). Issues highlighted by this scrutiny have included jury composition, lack of representativeness, criteria for jury eligibility, and cost of jury trials. The average length of criminal trials has increased by a factor of 10 in the past 50 years (one to two days versus two weeks or more) and the content has also become increasingly more complex (Dunford, 2004). As such, the focus of this criticism has recently shifted to the abilities of jurors to comprehend complex and lengthy trials, and render appropriate verdicts. The resultant lack of confidence in the jury has seen its scope and powers become more limited over recent years, as evidenced by the steady drop in reliance on jury trials in Australia (Chesterman, 1999). Although reliable statistical trends are difficult to establish, recent indications suggest that as few as 1% of all Australian criminal trials are tried before a jury (Ogloff, Clough, Goodman-Delahunty & Young, 2006). The limited experience or cognitive abilities of jurors could be blamed for this apparent lack of confidence, but some responsibility may also lie with a system that does not provide jurors with the requisite tools to enhance their decisions (ForsterLee, Kent & Horowitz, 2005). It seems that juror competence could be enhanced by providing jurors with aids that allow them to cope with the increasing demands of modern trials (Edmond & Mercer, 1997, 1999; ForsterLee & Horowitz, 1997) and there is a substantial body of research which suggests that the introduction of basic cognitive strategies may considerably enhance jurors' ability to perform their civil duties (ForsterLee & Horowitz, 1997, 2003; Heuer & Penrod, 1994). The potential of these jury-aids must

be fully explored before the functionality of the jury is discounted altogether (Lempert, 1993; O'Connor, 1997).

1.2 Juror Competence

In order for a trial to be fair, jurors must apply correct legal standards to the facts and evidence of the case, and reach a verdict (Lieberman & Sales, 1997). However, if jurors misunderstand the correct legal standards, justice itself is challenged (Elwork, Alfini, & Sales, 1982). For this reason, the level of juror comprehension is of serious concern, and a large body of literature has amassed dealing with this subject matter (Daftary-Kapur, Dumas, & Penrod, 2010). These studies consistently demonstrate that juror comprehension is poor, with even the most positive results suggesting that jurors understand little over 70% of the legal instructions given to them (e.g., Saxton, 1998; Strawn & Buchanan, 1976).

Strawn and Buchanan (1976) tested juror comprehension of pattern instructions employed in Florida using a 25 minute videotape of instructions for a burglary case. Instructed mock-jurors performed better than uninstructed mock-jurors on a 40-item questionnaire, but still only scored an average of 70%, suggesting that a considerable portion of the instructions was misunderstood.

A similar result emerged in Ellsworth's (1989) study of deliberating mock-juries. After viewing a 2 hour 30 minute videotaped murder trial simulation, 216 mock-jurors were randomly allocated into 12-person juries, in which they deliberated for 1 hour. These deliberations were videotaped and transcribed, and jurors completed a postdeliberation questionnaire. Although jurors spent an average of 21% of their time discussing the judge's instructions, their understanding of the relevant law was unsatisfactory, with results indicating that on average, jurors comprehended 65% of the instructions given to them. Such an outcome again

confirms that jurors have difficulty understanding and applying judicial instructions, even when they work hard at understanding them. Furthermore, it indicates that the process of deliberation has little impact on increasing comprehension and clarifying misunderstanding; an additional 72 non-deliberating jurors produced comprehension scores which were not significantly different from those of deliberating jurors.

An even more unsettling result was produced by Reifman, Gusick, and Ellsworth (1992), in a study which moved away from the jury simulation method, and instead questioned past jurors. Questionnaires were returned by 224 individuals who had recently been summoned for jury duty. These questionnaires contained questions about trial procedure and substantive criminal law issues; since the questionnaires were identical, every participant answered some questions about topics they had been instructed on, and some for which they had not received any information. Results revealed that although instructions improved performance on understanding of procedural issues, they had little effect on comprehension of the relevant substantive law to be applied, with instructed jurors overall answering fewer than half of the questions correctly. Admittedly, the fact that this study tested juror comprehension at the end of a jury duty term rather than immediately following a trial could mean that it was instruction recall, not understanding, which was being assessed. This casts some doubt over the especially low level of comprehension recorded in this study. Nonetheless, the results indeed confirm that jurors, whether in real or mock trials, do experience considerable difficulty comprehending and applying judicial instructions.

Kramer and Koenig's (1990) extensive questionnaire study followed a similar methodology to Reifman et al.'s (1992) study, but involved 882 jurors who had recently completed service. While analyses focusing on comparative comprehension suggested that jurors instructed on a particular issue were more likely to correctly

answer questions on that issue than their uninstructed peers, absolute levels of comprehension among instructed jurors were poor. For example, only 30.9% of instructed jurors correctly answered a question regarding the definition of *beyond reasonable doubt*. This study, then, simply added further weight to the growing research indicating jurors' poor comprehension of judicial instructions.

One of the most comprehensive field studies on juror comprehension, conducted by Saxton (1998), was undertaken in Wyoming, where data was collected from 253 jurors across 49 trials (17 civil and 32 criminal). Questionnaires specifically tailored to test jurors' understanding of the particular substantive issues which arose in each trial were designed, and distributed immediately after deliberations were completed. To obtain control data, 146 abbreviated questionnaires were also sent to individuals who had never served on a jury. Jurors reported spending a mean of 31% of their deliberation time studying the instructions, and 97% of jurors thought they had understood the instructions pretty well (61%) or completely (36%). Despite this, jurors correctly answered only 70% of questionnaire items. Research in the area of juror comprehension has revealed that it is not uncommon for jurors to perceive that the judicial instructions were useful in helping them understand the law, but as in Saxton's study, fail to demonstrate subsequent understanding when measured objectively (Ogloff & Rose, 2005). Further analysis of results for individual questionnaire items demonstrated that a considerable proportion of jurors misunderstood instructions relating to fundamental legal issues, such as the presumption of innocence and the burden of proof. Overall, instructed jurors did perform better than uninstructed control jurors, who only answered a mean of 53% of questions correctly, compared to the mean 70% returned by instructed jurors. So though the instructions increased comprehension to an extent, jurors' levels of understanding were still less than ideal.

In summary, the convergent results of this body of research clearly and consistently demonstrate that despite spending a considerable proportion of their time trying to understand judicial instructions, and often feeling that they have successfully achieved this, jurors' overall comprehension rates are far from perfect. Jurors continue to misunderstand key aspects of instructions in ways that could affect trial outcomes.

1.3 Improving Juror Comprehension

The issue of juror comprehension then, remains paramount. In order to function in its intended manner, the jury must first understand the law (Lieberman & Sales, 1997), but this body of literature makes it abundantly clear that levels of juror comprehension are in serious need of improvement. This has led to the suggestion and testing of a wide variety of reforms and possible jury-aids (Munsterman, Hannaford, & Whitehead, 1997). These contemporary jury innovations focus on a number of factors including reducing jurors' cognitive difficulties, improving the judge's communication with the jury, increasing juror participation in the trial, and rewriting the legislation and instructions themselves. Each of these factors has been subjected to differing levels of empirical testing (Ellsworth & Reifman, 2000).

Rewriting juror instructions.

One factor that has been the focus of considerable reform and intervention is the clarity of judicial instructions (Elwork & Sales, 1985; Wiener, Pritchard, & Weston, 1995). In response to criticisms regarding the incomprehensibility of many judicial instructions, the legal profession worked on the development and implementation of pattern instructions. These model sets of instructions put together by judicial or bar groups are now quite widely used in the USA (Lieberman & Sales, 1997), and to some extent in Australia and New Zealand (Daftary-Kapur et al.,

2010). They have provided many advantages to the legal system, reducing time demands on judges and lawyers, reducing the number of appeals, and eliminating any concerns over the effect of judicial bias on the outcome of a trial. Pattern instructions were also designed to increase juror comprehension, but it is less clear whether this has actually been achieved (Lieberman & Sales, 1997).

Concerned that pattern instructions had failed to increase juror comprehension, Elwork et al. (1982) attempted to rewrite such instructions to make them more readily understandable. A simple and a complex set of instructions were chosen, and juror comprehension was tested via personal interview following videotaped presentation of the instructions. The instructions were then rewritten in an attempt to further improve them, and the cycle was repeated with new participants. A total of 314 participants were involved. Significant improvements were achieved after each rewriting for the complex instructions. Jurors answered a mean of 51% of questions correctly with the original instructions, but after the initial rewrite, this score increased to 66%. The second rewrite saw the mean number of correct answers increase to 80%. Similarly for the simple instructions, original scores of 65% increased to 80% correct after only one rewrite. Such results clearly demonstrate that by rewriting judicial instructions, juror comprehension of such instructions can be significantly increased.

Severance and Loftus (1982) built upon the work of Elwork et al. (1982), attempting to rewrite pattern instructions to increase comprehensibility, using specific psycholinguistic principles (e.g., reducing legal jargon, replacing abstract words with more concrete ones, replacing negatively modified words; Charrow & Charrow, 1979). Severance and Loftus reviewed all questions jurors submitted to the judge over a one year period to identify specific sources of juror confusion, and rewrote specific sections of criminal pattern instructions. They then compared

comprehension levels of subjects receiving no instructions, general plus pattern instructions, and those who received the revised pattern and general instructions. Although the benefits provided by the revised instructions did not reach statistical significance on the comprehension measures, jurors receiving the revised instructions were significantly better at applying the instructions than those who received pattern instructions or no instructions. Such data again suggests that revision of pattern instructions by applying psycholinguistic principles can lead to improved juror performance.

Severance and Loftus further extended their earlier work in a study involving 306 ex- and current jurors, who received either pattern instructions or revised instructions, and were randomly allocated to deliberate or not deliberate (Severance, Greene, & Loftus, 1984). Jurors who heard the revised instructions tended to make fewer errors and apply the instructions more accurately than jurors who heard the pattern instructions, but this difference was not always statistically significant.

So, taken together, this body of research indicates that one possible way of improving juror comprehension is to devise legally accurate judicial instructions, but ones that are simplified and made more meaningful using basic psycholinguistic principles. However, this approach alone may not be sufficient. Although there is no definition of what constitutes an acceptable level of juror comprehension (Elwork et al., 1982; Lieberman & Sales, 1997), the fact that considerable rewriting of instructions still only increases comprehensibility to an average of 80% at best, is somewhat troubling. It is therefore important to consider the potential benefits which may be offered by other jury-aids.

Preinstructing jurors.

One of the critical variables affecting juror reasoning processes is the timing of the presentation of legal information (Cruse & Browne, 1987). The idea of presenting jurors with instructions prior to the commencement of the trial has been investigated as another potential reform which may increase juror comprehension. Legal scholars have reasoned that presenting jurors with some instruction at the beginning of the trial may allow them to organise and understand the evidence more effectively, since they will have some form of context or legal framework in which to interpret it (Smith, 1991). This would potentially lead to better recall of the evidence and instructions, less confusion and greater juror satisfaction. There are also, however, a number of possible drawbacks: judges may be unable to decide upon appropriate instructions before evidence presentation has begun, jurors may arrive at their final conclusion before the end of the trial, and, perhaps most importantly, preinstruction may create a proplaintiff bias, by encouraging jurors to look for confirmatory evidence (ForsterLee & Horowitz, 1997; Hastie, 1983).

Investigations of preinstruction have produced varied results. Self-report measures from Heuer and Penrod's (1989) field study suggested that jurors found preinstruction to be helpful, enabling them to understand and apply the law correctly. Despite this, there was no objective evidence indicating that preinstruction led to improved recall of instructions or evidence, or greater understanding of the trial procedure. Smith's (1991) study, on the other hand, suggests a more favourable impression of the benefits of preinstruction. Of the 125 participants involved, those receiving pre- and postinstruction were significantly better able to apply the law than participants who received either preinstruction or postinstruction only. Similarly, ForsterLee and Horowitz (1997) found that jurors who viewed a complex 2 hour toxic torts case were better able to award appropriate compensation amounts to

differentially worthy plaintiffs when preinstructed. Preinstructed jurors also recalled more probative (i.e., trial relevant) information than postinstructed jurors.

It seems, however, that the possibility of preinstruction creating a proplaintiff bias is still a noteworthy concern. ForsterLee and Horowitz (1997) found that preinstructed notetakers recorded items and evidence concerning the plaintiffs significantly more than postinstructed notetakers. There was no other evidence that a proplaintiff bias had been engaged, but a more definitive test of this possibility would need to manipulate presentation order, which this experiment did not.

Bourgeois, Horowitz, ForsterLee, and Grahe (1995) also demonstrated a proplaintiff bias in jurors who were presented with a case which clearly favoured the defence. Jurors were preinstructed on the relevant law, and then watched a video re-enactment of a complex (i.e., highly technical language) or a less complex (i.e., simpler language) trial. Preinstruction led to prodefence verdicts only in the less complex trial, and engaged a proplaintiff bias in the more complex trial, suggesting that preinstruction will facilitate systematic processing of evidence in a less complex trial only. Thus, the possible use of preinstruction as a jury reform remains questionable.

Permitting juror notetaking.

Other approaches to improving juror comprehension have focused on reducing the cognitive load (the total amount of mental activity imposed on working memory at an instance in time) placed on jurors (Sweller, 1988, 1994). One such potential jury-aid which has been explored extensively is allowing jurors to take notes throughout trials (ForsterLee & Horowitz, 1997). Notetaking is a ubiquitous aid for anyone engaged in trying to comprehend information (ForsterLee et al., 2005) based on the idea that it aids memory and facilitates learning by promoting

processing, interpreting, inferring, rehearsing, condensing and paraphrasing of content (Aiken, Thomas & Shennum, 1975). The tasks faced by a juror are highly cognitive in nature, requiring the use of memory, judgement, evaluation and decision-making skills, so theories regarding cognitive processes are highly relevant to this particular area of research (Devenport, Studebaker & Penrod, 1999).

Information processing theories.

When notetaking has been explored as a cognitive aid in more general settings (e.g., notetaking during lectures), experiments have returned mixed results. Some studies have found that taking notes while information is presented is facilitative (DiVesta & Gray, 1972), others have failed to find this effect (Berliner, 1969), and others still have suggested that notetaking may in fact hinder memory for information (Peters, 1972).

Researchers have referred to several theories when attempting to explain these inconsistent results. Facilitative effects have been attributed to the encoding hypothesis, which states that notetaking should be beneficial as a result of the transformation of material into a subjectively more meaningful form (DiVesta & Gray, 1972). Of course, these kinds of transformational and elaborative processes are not necessarily guaranteed, and some researchers argue that notetaking is actually more comparable to verbatim transcription than meaningful and elaborative processing (Anderson, 1970). The external storage hypothesis postulates that notetaking is a beneficial process simply because it preserves information for later review and processing; the ability to access notes, then, is better than the process of actually taking them (Miller, Galanter & Pribram, 1960). The essential difference between these two theories relates to the process that actually facilitates encoding; the encoding hypothesis states that this occurs during the notetaking itself, whereas

the external storage hypothesis suggests that review and study of the notes assists the encoding process. Finally, other researchers have highlighted the role of interference, pointing out that notetaking individuals are simultaneously attempting to listen to, process and record information and such attempted dual processing will more likely hinder rather than facilitate encoding (Peters, 1972). Each of these theories acknowledges that whether notetaking is a beneficial or unhelpful process for enhancing learning and memory is influenced by a number of other variables, including the rate and density of information delivery (Aiken et al., 1975) and individual variance in short-term memory capacity (DiVesta & Gray, 1973).

Considering these various cognitive processing theories, Carter and Van Matre (1975) investigated retention of lecture material by 172 college students, manipulating the presence of notetaking and of a pretest review of the notes. Participants who were able to both take and review notes achieved significantly higher scores on retention and efficiency measures than notetaking participants who were not given the opportunity for review. These results led the researchers to conclude that performance is enhanced by "note having" as opposed to "note taking," thus supporting the external storage hypothesis. The researchers proposed that review of notes provided an additional learning trial that allowed retrieval efforts to focus more effectively on relevant material. They also suggested that the cues provided by the notes may facilitate reconstruction of parts of the lecture that were not initially recorded, leading to improved recall of additional information.

Aiken et al. (1975) also provided evidence which casts doubt upon the encoding value of notetaking, demonstrating that under some conditions, notetaking can interfere with comprehension and retention of information. In this study, the recall of presented lecture material was tested in 180 college students who were divided into either a parallel notes condition (where notes were taken during the

lecture), a spaced notes condition (where notes were taken in short breaks at the end of each lecture segment) or a no notes condition. Lecture presentation rate and density of information were also manipulated. On recall measures, spaced notetaking was superior to both parallel notetaking and no notes. Notably, there was no significant difference in recall between participants in the parallel and no notes conditions, suggesting that the interference caused by the dual task requirements (simultaneous processing and recording of the information) removed any advantage that may have been conferred by allowing notetaking. Other studies have found parallel notetaking to even be inferior to a no notes control group (e.g., Peters, 1972).

Studies of juror notetaking.

Although lectures and trials differ along a number of different dimensions (e.g., length, content, format and presentation of information), the investigation of notetaking in more general contexts encouraged jury researchers to explore this area. They rationalised that reducing unnecessary constraints on jurors' cognitive abilities by allowing them to take notes throughout the trial, as opposed to retaining the content of lengthy and complex trials in their memories, should enhance both juror fact-finding and decision-making (Heuer & Penrod, 1988). Other postulated advantages associated with notetaking included the potential to enhance juror attention, and the opportunity notes provide for jurors to refresh their memory of important case facts (ForsterLee et al., 2005).

Initial field experiments produced somewhat counterintuitive results, finding no evidence to support the hypothesis that notetaking would serve as a useful memory aid. Hastie (1983) compared notetaking and non-notetaking jurors who watched a videotape of an actual armed robbery trial and deliberated to a verdict in six-person juries. Notetaking jurors demonstrated a significant tendency to perform

less well than non-notetakers on tests of individual judicial instruction recall. Hastie concluded that jurors do not take notes well, do not use them effectively, and do not find them useful, leading him to suggest that juror notetaking should be discouraged. However, jurors were not allowed to consult their notes during the recall test, so Hastie's finding may simply be a reflection of jurors' need to rely more on their notes as a memory aid and less on storing the information in memory. No significant differences in juror confidence were reported as a function of notetaking.

Similarly, Heuer and Penrod's (1988) field study found no support for the hypothesis that juror notes would serve as a useful memory aid. In addition, juror ratings of difficulty understanding the law and verdict confidence were not affected by the notetaking manipulation. Heuer and Penrod (1988) did, however, acknowledge that the absence of significant results may be due to the fact that jurors completed the comprehension measure approximately two days after the trial had been completed, and without the benefit of consulting their notes. Also, Heuer and Penrod (1988) were forced to rely on very general measures of recall, as they were unable to individually tailor a specific comprehension measure for each case. The very nature of field studies also implies that notetaking jurors decided different cases to non-notetaking jurors, making direct comparison difficult (ForsterLee et al., 2005).

Despite these initial results, there now exists quite a large body of evidence in support of the utility of notetaking. For example, Rosenhan, Eisner, and Robinson (1994) required 128 university students to watch a 75 minute videotaped trial simulation based on an actual civil case. Half of these mock-jurors were notetakers, while half were non-notetakers. After the trial, jurors completed an individual questionnaire which assessed their recall using both multiple-choice and open-ended questions, with their notes available for reference. Notetaking jurors scored

substantially higher on recall measures than non-notetakers, reported feeling more involved in the trial, being more attentive, and found it easier to keep pace with trial proceedings. Thus, not only did notetaking improve recall, it also enhanced subjective trial experience.

Further, ForsterLee, Horowitz and Bourgeois (1994) played a 2 hour audiotaped re-enactment of a prototypical toxic torts case to 192 mock-jurors who were randomly allocated to one of three notetaking conditions; notetaking jurors able to access their notes while making their decision; notetaking jurors not able to access their notes during decision-making; and non-notetaking jurors. Both notetaking groups were better able to distinguish between differentially worthy plaintiffs, and awarded appropriate compensation. Non-notetaking jurors did not differentiate between plaintiffs as successfully, and recalled significantly less probative information than those in both notetaking conditions. There were no significant differences in recall between the two notetaking conditions, suggesting that benefits of notetaking occur as a result of the process itself, consistent with the encoding hypothesis (DiVesta & Gray, 1972).

In a similar experiment, Horowitz and ForsterLee (2001) examined the potential benefits of notetaking, compared to allowing trial transcript access. A 1 hour videotaped version of a trial re-enactment was shown to 195 mock-jurors, who then deliberated for at least 30 minutes in groups of five to six members. Confirming their earlier findings, notetaking juries, regardless of whether or not they also had transcript access, were able to appropriately distinguish between the four differentially worthy plaintiffs, and made fewer errors on a recognition task. On the other hand, non-notetaking juries were only able to identify the most severely injured plaintiff. These results suggest that access to trial transcripts is not as beneficial as allowing jurors to take notes, though the extent to which jurors with transcript access

actually reviewed and relied upon the material therein is unclear, providing a possible explanation for the lack of transcript influence (Robbennolt, Groscup, & Penrod, 2006). Horowitz and ForsterLee infer from their data that note-taking led to more systematic processing and efficient discussion of the evidence, again consistent with the encoding hypothesis.

ForsterLee & Horowitz (1997) examined the possible synergistic effects of note-taking and preinstruction. Mock-jurors were randomly assigned to receive judicial instruction before evidence presentation or after, and were either permitted to take notes, or not permitted to take notes. They then watched a 1 hour 10 minute video re-enactment of a toxic torts case. Based on a recall measure, and the compensation awards, ForsterLee and Horowitz (1997) demonstrated that preinstructed jurors assigned more appropriate awards to the plaintiffs, and recalled more relevant evidence than postinstructed jurors. Note-taking further enhanced the benefits provided by preinstruction.

Drawbacks to notetaking.

So, the research on the efficacy of notetaking is mixed; some jurors report satisfaction, field studies have failed to find measurable advantages, while more controlled laboratory-based experiments suggest that notetaking may enhance juror satisfaction and possibly improve performance (ForsterLee & Horowitz, 1997). Despite the positive findings of controlled studies, researchers and legal professionals have highlighted several concerns with regard to permitting juror notetaking (Heuer & Penrod, 1988). For example, it has been suggested that notetaking may be distracting, either to other jurors, or to the notetakers themselves (Flango, 1980), possibly causing jurors to miss important points (McLaughlin, 1982) or fail to pay sufficient attention to witness credibility (Hastie, 1983). It is well

acknowledged that "active" cognitive aids, like notetaking, consume cognitive resources, possibly depleting attentional resources and interfering with the comprehension of difficult material (Horowitz & ForsterLee, 2001; ForsterLee et al., 2005), and studies concerning divided attention have demonstrated that when people simultaneously complete two cognitively demanding tasks, performance suffers and heuristic processing is activated (Gilbert & Hixon, 1991).

Other concerns pertain to the possible unfair advantage that a notetaker may have over non-notetaking jurors; notetaking jurors may dominate deliberations, and use their notes as a tool to exert undue influence over jurors who choose not to take notes. There is no guarantee that notetakers will be accurate transcribers (ForsterLee et al., 2005), and if jurors are unskilled at notetaking, have trouble keeping pace with the trial, have poor concentration spans, or include notes on inadmissible testimony, their notes are likely to be problematic (Flango, 1980). There is no assurance that jurors will note more probative information than nonprobative, and there is some concern that jurors may overemphasise evidence that was noted, at the expense of that which was not (ForsterLee et al., 1994). Notetaking may produce a bias in favour of the party presenting its evidence first; jurors' initial enthusiasm and vigilance may fade away as the trial progresses (Stephenson, 1992), thus fewer notes may be taken throughout the latter stages of the trial, resulting in an unbalanced set of notes. A final concern is that inconsistencies between jurors' notes may heighten any disagreements among the group; jurors stubbornly defending their own record of the trial may lead to longer deliberation time and increase the likelihood of hung juries (Heuer & Penrod, 1988).

Evidence for drawbacks of notetaking.

The results of Flango's (1980) field trial provided some initial evidence regarding these possible drawbacks. The study involved one civil and one criminal jury who were allowed to take notes, and one civil and one criminal jury who were not. Notetakers reported finding the case less difficult to decide than those who did not take notes. A matter of concern, though, was that notetakers reported placing less reliance on other jurors than non-notetakers, and four out of six jurors on the criminal jury reported being persuaded to change their initial verdicts as a result of arguments other jurors made from their notes. Also, all jurors on the criminal trial reported that the person who kept the best set of notes was the most effective person in the deliberation. These results are based only on juror self-report, and the sample size is small ($N = 24$), so these tentative findings can be considered suggestive only, but they do add some weight to the possible problem of notetaking juror dominance. The study produced mixed results on the issue of unbalanced notes; half of the jurors reported taking more notes in the first half of the trial, but the remainder reported taking notes evenly throughout. Both Hastie's (1983) and Flango's studies failed to report a significant difference in deliberation time between notetaking and non-notetaking juries.

Heuer and Penrod (1988) briefly investigated each of the potential drawbacks of notetaking in a more comprehensive field trial involving 34 civil and 33 criminal trials, in which the presence or absence of notetaking was randomly assigned to each participating jury. As described above, they found that notetaking jurors did not perform better than non-notetakers on recall measures and were not any more confident in their verdicts, though they did report increased satisfaction with the trial experience. The evidence Heuer and Penrod (1988) collected strongly suggested that notetaking did not serve as a source of distraction during the trial. Self-report data

indicated that all jurors felt that notetakers should not, and did not, have more influence than non-notetakers. According to juror self-report, their notes tended to consist more of valuable records as opposed to doodles, and 87% of jurors reported that no part of the trial was too fast for them to keep pace with. One judge reviewed the notes taken in eight of his trials to provide some non-self-report insight into the accuracy of jurors' notes, and concluded that approximately one third of all jurors took surprisingly detailed notes and demonstrated a good grasp on the issues of the case. Jurors did not report taking more pages of notes at any particular time during the trial, the notetaking manipulation failed to produce any reliable differences in deliberation time, and jurors did not report any differences in degree of agreement as a function of notetaking. Overall, Heuer and Penrod (1988) described notetaking as an "innocuous" procedure, concluding that while there was no clear support for most of the anticipated benefits of notetaking, they could find no evidence to suggest that notetaking resulted in any of the purported harmful consequences.

1.4 Justification for Investigation of Alternative Jury-Aids

Aside from Heuer & Penrod's (1988) study (which relies largely on juror self-report), and Flango's (1980) field trial (which relies on a very small sample and self-report data), there has been very little research into these possible drawbacks of notetaking. However, most likely due to the ease and economy of implementation, juror notetaking is currently one of the most widespread jury-aids in use in the criminal justice system (Ogloff et al., 2006). It is concerning to consider that, for lack of any firm evidence to the contrary, significant drawbacks associated with the use of this particular jury-aid may be compromising its efficacy. More importantly, the lack of firm evidence regarding these potential drawbacks makes it difficult for the justice system to place any real confidence in notetaking as a viable jury-aid, and

as a result, there is no consistent approach to its implementation in the courtroom (Ogloff et al., 2006). Ideally, for a jury-aid to perform its intended function, there should be sufficient confidence in its efficacy for it to be employed consistently, as a standard approach to assist jurors in performing their role. Currently, due to the ongoing disagreement about the possible advantages and disadvantages of allowing jurors to take notes (Ogloff & Rose, 2005), juror notetaking is not held in this regard, suggesting that the search for alternative jury-aids needs to continue.

Content of juror notes.

Another compelling reason for the need to investigate alternatives to juror notetaking stems from the likely content of jurors' notes. The role of the jury is to decide matters of fact, not law. However, in order to arrive at a decision, jurors must not only master the facts of the case, they must also have a sound comprehension of the relevant law and be able to employ the judicial instructions (Ogloff et al., 2006; Smith, 1991). There appear to be no published studies that have conducted an in-depth analysis of the content of jurors' notes, though several studies have conducted an in-depth analysis of the content of jury deliberations. One general pattern observed across these studies is that the largest proportion of statements tends to centre on testimony and facts of the case, while a smaller proportion of discussion relates to legal issues (Tanford & Penrod, 1986). For example, Ellsworth (1989) transcribed 18 videotaped 12-person jury deliberations, and classified the general nature of coded statements. This revealed that jurors spent more time discussing the facts of the case than anything else (47% of coded units referred to facts of the case), whereas jurors spent less than half the same amount of time (21%) trying to understand the law. In addition, this study also acknowledged that jurors' understanding of the law was substantially inferior to their understanding of the facts

and issues, and this has been recognised as a general characterisation of jurors' cognitive performance during trials (Ellsworth, 1989). Considering the disproportionate amount of time jurors in Ellsworth's study spent trying to understand the law, as compared to the facts, it seems likely that an analysis of juror note content would similarly reveal that the focus of a large proportion of jurors' notes is on the facts of the case rather than the law. The likely focus on facts may be attributed to their concrete nature, as opposed to the abstract set of decision criteria comprising the legal directions (Smith, 1991).

Schema theory.

Jurors' tendency to focus on the facts rather than the law is also consistent with the premise of schema theory. This approach to memory and learning postulates that our knowledge of the world consists of a set of schemata: structured representations or frameworks which are based on past experience, and centre around a specific area, helping to organise our knowledge and assumptions about that particular topic (Baddeley, 1976; Bartlett, 1932). When we attempt to learn something new, we tend to base our learning around pre-existing schemata, so information consistent with such a pre-existing schema is easier to assimilate than information for which there is no pre-existing schema (Bartlett, 1932).

It therefore follows that jurors are more likely to record information which fits within a pre-existing cognitive framework, than novel information which is foreign to them (Bartlett, 1932). Although laypeople may possess some sense of "commonsense justice" (Finkel, 1995), it is unlikely that the depth of their knowledge would extend to the detailed legal concepts presented during a real criminal trial. As such, we would expect that information such as names, dates and events would be more familiar to jurors, more likely to fit into a pre-existing schema

and thus more likely to be recorded than information regarding, for example, the standard of proof, the elements of an offence and the rules of evidence. Smith's (1991) study provided some evidence for this proposition that jurors have a pre-existing schema for interpreting and organising factual information. While preinstruction about the law allowed jurors to apply the law to the presented trial more successfully, there were no differences between preinstructed, postinstructed, and pre- and postinstructed jurors on a measure of fact recall. Smith (1991) proposed that jurors' processing of the facts and the law might be independent of each other, and that the absence of significant differences on the fact recall measure might be due to the pre-existence of appropriate schema for making sense of such information.

The likely emphasis on factual information at the expense of information about the law contained within jurors' own notes would make it difficult for jurors to perform their role effectively. Some researchers have openly acknowledged that a reform like notetaking cannot eliminate or even profoundly reduce the significant differences in the levels of comprehension demonstrated by laypeople as opposed to legal professionals (Penrod & Heuer, 1997). Thus, in addition to reducing overall cognitive load, alternative jury-aids should also aim to compensate for the lack of balance likely in jurors' own notes.

Processing style.

Jury-aids should also aim to encourage more systematic processing of information. It is generally accepted that when information is too complex or technical, decision-makers may rely on less elaborative methods and depend instead on heuristics; such concerns are highly relevant within the context of juror comprehension (Chaiken, 1987). By making information more accessible and understandable, jury-aids should also encourage jurors to expend considerable

cognitive effort and engage in systematic processing of the message being conveyed, using a central route (Petty & Cacioppo, 1986). In particular, provision of written, court-prepared jury-aids provides jurors with the opportunity to review material, and repeated exposure to complex information has been shown to enhance systematic processing and decrease the use of heuristics (Cacioppo & Petty, 1979; Petty & Cacioppo, 1986). Also, review of written material enhances effortful processing because it allows close attention to difficult passages which are not as easily retrievable using other presentation modes (Chaiken & Eagly, 1976).

When a juror engages in central route processing, they process the information presented, generate thoughts about the quality of the evidence, and store and elaborate on these thoughts. This elaboration process involves accessing relevant experiences and associations in memory, evaluating evidence based on its quality and the relevant associations, and making judgements based on the constructed cognitive networks (Petty & Cacioppo, 1986). Elaboration is critical to central route processing, and it seems likely that the resulting coherent construction of the evidence would improve juror comprehension (Horowitz & ForsterLee, 2001).

1.5 Alternatives to Juror Notetaking

If it is acknowledged that there are problems associated with allowing jurors to take their own notes, and that there are a number of additional justifications for pursuing possible alternatives, there is much potential to provide jurors with a variety of written materials, such as flowcharts or decision trees detailing the elements of the relevant offence(s) and defence(s), preprepared notes detailing the most important aspects of the case, chronologies of events, guided notes (notes which help jurors recognise important things to record) and evidence summaries. Due to the unique ability of court-provided notes to provide a more balanced account of both the factual

and legal information jurors need to be aware of, there is a developing body of research into such written alternatives to notetaking. The suggestion that such procedural innovations which reduce the cognitive demands placed on jurors during a trial also facilitate jurors' ability to follow limiting instructions, ignore inadmissible testimony and be less susceptible to extra-evidentiary factors (MacCoun, 1987) provides an additional rationale for investigating these jury-aids (Lieberman & Arndt, 2000). It has also been argued that since the courts usually give jurors very little guidance (aside from the instructions read from the bench), the provision of court-prepared jury-aids may also have indirect benefits, potentially increasing juror motivation by demonstrating a certain degree of commitment and investment in the jury's task (ForsterLee et al., 2005).

This idea of *providing* jurors with some form of notes has been acknowledged, and some written alternatives to jurors' own notes have been subjected to empirical investigation.

Transcript access.

As discussed above, Horowitz and ForsterLee (2001) compared the potential benefits of notetaking to allowing transcript access, and found that allowing access to a trial transcript provided no advantages over and above those already provided by the participants' own notes, concluding that notetaking juries were more likely to process evidence more systematically. However, an earlier study conducted by Bourgeois, Horowitz and ForsterLee (1993) evaluated transcript access in a more positive light. By exposing jurors to a high or low technicality version of a medical malpractice trial, Bourgeois et al.(1993) tested whether the opportunity to repeatedly review problematic portions of the evidence afforded by transcript access might potentially enhance systematic processing (the trial was designed such that

systematic processing of the evidence should have resulted in a decision for the defendant). For jurors exposed to the high technicality version of the trial, transcript access led jurors to favour the defendant, while jurors in the no access condition decided for the plaintiff. Transcript access did not affect verdicts for jurors exposed to the low technicality trial. An additional recognition test, however, returned no significant results. Bourgeois et al. (1993) suggested that jurors may have used the transcript as an opportunity to check specific parts of witness testimony or judicial instructions that needed clarification rather than reviewing the entire case, thus explaining how transcript access could influence verdicts without increasing overall recognition scores. It was concluded that transcript access increased the comprehensibility of the trial, allowing jurors to engage in more systematic processing of the evidence and reach more appropriate verdicts. Horowitz and ForsterLee (2001) explained the discrepancy between their results and those of Bourgeois et al. (1993) as a function of the differences in the mock trials used, the latter being more complex, longer and not turning on the interpretation of a single point.

Providing a written copy of judicial instructions.

The only guidance the jury receives regarding the relevant legal principles to be applied is from the judge at the conclusion of the trial, and it is crucial that jurors comprehend this legal information (Brewer, Harvey & Semmler, 2004). However, this "dry and abstract presentation of the law" (Ellsworth, 1989, p. 224) delivered by the judge, immediately following the much more vivid and concrete presentation of evidence, has been identified as problematic. Typically, judicial instructions are administered to juries orally, and jurors have reported experiencing difficulty concentrating on, absorbing and recalling orally presented information given few

written or visual aids (Forston, 1970; Tinsley, 2001). Considering this, and the fact that information is often processed more effectively when it is provided in a written form (Elwork et al., 1982) and that the repeated exposure that a written copy allows facilitates understanding and recall (Heuer & Penrod, 1989), some jury researchers have investigated the potential benefits of supplementing the oral presentation with a written copy of the instructions (Lieberman & Sales, 1997).

These studies have produced mixed results. Although written instructions have been demonstrated to lead to more efficient and higher quality deliberations (Forston, 1975) and greater juror satisfaction (Heuer & Penrod, 1989), both Heuer and Penrod (1989), and Reifman et al. (1992) failed to find any evidence that they increased jurors' understanding of the law. In both of these studies, jurors receiving written instructions did not differ from jurors receiving oral instructions in the number of correct responses given, although jurors in Heuer and Penrod's (1989) study responded positively when asked about the helpfulness of the written instructions. Jurors in these studies, however, completed comprehension questionnaires some time after completing jury service. Kramer and Koenig (1990) and Prager, Deckelbaum, and Cutler (1989), on the other hand, tested jurors immediately following the trial, and found evidence suggesting that written instructions did improve comprehension, such that jurors receiving written instructions performed significantly better on measures of comprehension than those receiving oral instructions alone. Lieberman (2009) suggests that these mixed results are unsurprising considering that some of the instructions in these studies had been revised to make them more understandable, while others had not. He suggests instructions which are complex will remain difficult to decipher, regardless of presentation format.

Sand and Reiss (1985) investigated attitudes of judges and counsel to this reform, in a field investigation involving 12 trials. The procedure was rated as being *very helpful* in six cases, and *somewhat helpful* in the remaining six cases. Those who supported the procedure noted the fact that written instructions saved rereading of the charge as the main advantage provided. The legal professionals who considered the procedure to be unhelpful cited concerns that it encouraged the jury to interpret the law on their own rather than asking for clarification, and that the procedure entailed too much effort for the benefits it provided.

Bottom line summaries.

Juror comprehension of expert testimony in complex trials has long been a source of concern (Nordenberg & Luneberg, 1981), and written summaries of such testimony have been suggested as a way to alleviate the cognitive demands it places on jurors. Bottom line summaries are designed to facilitate the development of schemas to help jurors understand and evaluate the evidence more effectively, and in turn render more rational verdicts. ForsterLee, Horowitz, Athaide-Victor, and Brown (2000) examined the efficacy of bottom line summaries, randomly assigning 68 mock-jurors to receive a summary before the testimony, after the testimony, or not at all. Participants then viewed a 157 minute video re-enactment of an actual toxic torts trial. Mock-jurors presented with the summaries were better able to distinguish between differentially worthy plaintiffs than those who received no summaries, but presenting the summaries prior to the evidence enhanced jurors' ability to make such distinctions. Those in the before condition also recalled more probative evidence and rated the evidence as being less technical, than those in the after condition, and those who did not receive summaries at all. This study clearly

suggests that the provision of bottom line summaries of complex testimony fosters more competent juror decision-making.

ForsterLee et al. (2005) investigated the efficacy of bottom line summaries as compared to jurors' own notes in a study involving 279 mock-jurors who witnessed a 90 minute toxic tort trial. Presentation of the summary statements enhanced the ability of jurors to discriminate appropriately between the claims of the plaintiffs as opposed to jurors who did not receive the summaries. A synergistic effect of the two jury-aids on the quality of decision-making was also observed, such that notetaking juries provided with summaries assigned appropriate monetary damages compared to juries who were not given the opportunity to take notes. Juries who did not have the benefit of either jury-aid were only able to distinguish the most severely injured plaintiff. On the recall measure, juries presented with summary statements recalled more trial relevant information than those who did not receive the statements, and notetaking juries recalled more case-related information than non-notetaking juries, though no interaction was observed. Presence of either jury-aid led to significantly higher ratings of satisfaction with trial proceedings, whereas the absence of jury-aids resulted in significantly lower satisfaction scores. The authors concluded that the summary statements simplified the evidentiary content and emphasised important details from expert testimony, thus facilitating the encoding process.

Special verdict forms.

Special verdict forms track the elements of the particular cause of action, and obtain the jury's decision on each of the elements defined in the instructions, leaving only conclusions of law to be drawn. They are thought to improve comprehension because the format employed ensures that jurors attend to key elements conveyed in the jury instructions (Lieberman, 2009). Special verdict forms are also thought to

eliminate certain logical and probabilistic instructions by breaking the jurors' task down into a series of subdecisions (Schum & Martin, 1982). Wiggins and Breckler (1990) tested the efficacy of special verdict forms, requiring jurors to answer questions regarding burden of proof, and to determine verdicts in novel scenarios. While jurors receiving special verdict forms performed significantly better than jurors in the general verdict condition on the burden of proof questions, there was no difference between the groups on the verdict measure.

Heuer and Penrod (1994) conducted an extensive field investigation involving 160 trials, in which they manipulated juror notetaking and question asking, as a function of different dimensions of trial complexity. Although not manipulated, the extent to which other trial procedures were employed was also examined, and included in this was the use of special verdict forms. Of the nonexperimental measures, the use of special verdict forms proved to be the most consistently beneficial, with jurors reporting feeling better informed, more satisfied, more confident in the accuracy of their verdict and more confident that their verdict properly reflected the judge's instructions. It is, however, difficult to draw meaningful assumptions from jurors' estimations of their understanding and performance; the utility of special verdict forms, then, remains unclear.

Flowcharts.

Aside from the difficulty of understanding complex legal principles, it is well accepted that jurors require some overall direction and assistance in learning to organise the material they are presented with throughout a trial in a manner that will enable them to apply the law to reach a verdict (Ogloff et al., 2006). Schema theory (Bartlett, 1932) and previous studies of text comprehension have highlighted the importance of structure in the material in improving recall and comprehension. It

has therefore been suggested that the pictorial representation provided by a flowchart, decision tree or diagram may complement verbal judicial instructions by holding jurors' attention more effectively, and underscoring the underlying structure of the unfamiliar material which may better highlight the relationships between legal concepts (Graesser, 1981a, 1981b; Otto, Penrod, & Dexter, 1994). In addition, cognitive load theory (Sweller, 1988; Sweller & Chandler, 1994; Sweller, Chandler, Tierner, & Cooper, 1990) suggests that presenting material using both visual and verbal modalities may help to overcome barriers to comprehension caused by working memory limitations. The other benefit expected from a flowchart-type procedure is that the requirement that jurors actually answer specific questions assists in focusing their attention on the law (Dattu, 1998; Ellsworth & Reifman, 2000). Although there are no formal guidelines surrounding their use, flowcharts prepared by the judge are sometimes used in Australian and New Zealand courts, at the judge's discretion (Ogloff et al., 2006; Young, 2003. For further information on rates of implementation, see below).

The possibility of utilising a flowchart to assist comprehension of judicial instructions has been explored by researchers, again producing mixed results. While Ogloff (1998) found that the use of a flowchart did not improve comprehension levels, and that jurors tended not to use the chart during deliberations, an investigation conducted by the New Zealand Law Commission (1999) revealed that all jurors on two trials where the judge prepared a summary of his instructions and a flowchart with a sequential list of questions rated this as an 'extremely useful' aid to decision-making.

Semmler and Brewer (2002) also returned a more promising result. In a study involving 234 volunteer community participants, Semmler and Brewer randomly assigned participants to one of eight groups. All participants heard a 700

word case summary which described a murder case in which the defendant was claiming self-defence, followed by the relevant judicial instructions. The experimenters manipulated the provision of either a written summary of the judicial instructions or a flowchart, and whether this was available to participants for review only (no access while completing the dependent measures), or for reference as they completed the recall tasks. Results revealed that participants who received the summary for review and those who received the flowchart for reference, outperformed all other conditions when preparing a brief description of the elements of self-defence. Interestingly, participants who only reviewed the flowchart performed no better than participants who received no comprehension aids. Semmler & Brewer elected to further test participants' understanding of the principles of self-defence, by requiring them to apply their knowledge to novel scenarios. The apparent ability of participants in the review summary and refer flowchart conditions to more accurately describe the elements of self-defence did not seem to translate to this particular measure, as participants across all groups performed relatively poorly. The dependent variables utilised represent an area of great strength in this particular study; they constitute comprehensive, varied and realistic methods of testing participant comprehension. However, considering that the overall question being explored by this study has strong links with elements of general information processing, it would be useful to conduct a similar experiment utilising a more realistic representation of a trial; participants attempting to make sense of instructions about self-defence would typically have been exposed to much more information than would be contained in a 700 word trial summary. Nevertheless, the results certainly provide some evidence to suggest that so long as participants can refer to the flowchart while completing the comprehension test, this more structured, pictorial representation of key information elements seemed to

complement verbal judicial instructions, perhaps combating the typically "dry and abstract presentation of the law" (Ellsworth, 1989, p. 224) and subsequently improving juror comprehension.

The research in this area was extended by Brewer et al.'s (2004) study which investigated the potential efficacy of audio-visual presentation of judicial instructions, utilising a combination of verbal information, computer animations and a flowchart. While law students performed better than novices on measures of self-defence comprehension when instructions were presented using audio only, novices' comprehension scores matched those of law students when instructions were administered using the audio-visual format. Although the study cannot provide a definite explanation for the performance improvements, cognitive load theory (Sweller & Chandler, 1994), as explained above, suggests that the use of both visual and verbal presentation modes exploits separate memory systems, thus allowing more information to be processed at once (Tindall-Ford, Chandler, & Sweller, 1997).

1.6 Alternatives to Notetaking – Further Exploration of Provided Notes

Despite the enthusiasm for jury-aids like those described above expressed by some authorities, these procedures are actually quite controversial and not universally endorsed. Arguments for and against such aids have been advanced by courts, legal professionals, legal scholars and social scientists alike, and the debate over these procedures is far from new (Robbennolt et al., 2006). Based on this observation alone, the need for ongoing research and clarification is clear, but several other factors justify the need for the current investigation.

Multiple reforms.

Considering the wide range of written materials which may serve as alternatives to jurors' own notes, only a few of these alternatives have been subjected

to empirical examination, and in many cases no clear outcome has been achieved. In addition, almost all of the research so far has considered each of these possible jury reforms in isolation (Ellsworth & Reifman, 2000). Such an approach allows elucidation of the benefits afforded by specific reforms, but provides little information on the possible effects and benefits occurring as a result of the implementation of multiple reforms, and precludes insight into potential interactions between procedures (Penrod & Heuer, 1997). It seems logical that if the courts were prepared to provide jurors with materials to improve their comprehension, they would be happy to employ more than one type of jury-aid, and it seems likely that it will take a combination of remedies to maximise juror comprehension (Ogloff & Rose, 2005). It has been suggested that rather than merely tinkering with minor changes to the status-quo, a more comprehensive approach is required (Ogloff & Rose, 2005). Exploring the effects of several jury-aids working together is therefore an important avenue of study (Ellsworth & Reifman, 2000), especially considering that synergistic effects have previously been recorded (ForsterLee & Horowitz, 2003). Since the aim of jury-aids is to reduce the cognitive demands placed on jurors it would be important to ensure, for example, that the simultaneous introduction of multiple provided materials did not overwhelm jurors and compromise their comprehension-enhancing effects. It might also be suggested that the synergism of an active aid and a passive aid may be more efficacious than several passive aids, because they facilitate information processing in two mutually reinforcing ways (ForsterLee et al., 2005). More work is therefore needed to assess empirically the benefits of combining a number of different jury innovations (Lieberman, 2009), and the current series of studies is intended to address this issue.

Recall versus understanding.

When the large body of literature investigating jury-aids is taken together, it seems fair to say that the dependent variables used throughout most of these studies test recall. The efficacy of the particular jury-aid is usually at least partly evaluated based on whether it improves participants' memory of the relevant material, whether that is assessed via recognition, recall, or transfer measures, and a strong connection between improved memory and improved comprehension is assumed. While this emphasis on memory is understandable, when we consider that the value of increased recall depends on the value of what is being recalled, this emphasis on facilitating recall seems problematic (Diamond & Levi, 1996) It is also possible for a juror to correctly remember an instruction yet be completely mistaken about its meaning (Ogloff & Rose, 2005).

The primary role of the juror is not to recall the legal and factual content of a trial, but rather to use this information effectively as part of an overall decision-making process; understanding is necessary, memory is not. The basic purpose of jury-aids in general should be to reduce any unnecessary load placed on jurors' cognitive abilities, allowing them to focus more cognitive resources on the task of understanding the trial, rather than remembering it. The relative worth of various jury-aids then, should be evaluated based on their efficacy as a comprehension aid and memory supplement rather than a way of enhancing recall. If courts decide to provide jury-aids, there is no reason why these aids must be removed once the decision-making process has begun (Rosenhan et al., 1994). Rather, it seems logical to allow jurors to rely on these materials while they wrestle with uncertainties about the facts and law of the case and make their decision. As such, the current series of studies is designed to focus on assessing how effectively participants can use

provided materials to improve their comprehension and understanding, rather than their recall.

Judicial discretion.

In response to the needs of jurors, Australian judges have implemented many of the above-mentioned jury-aids in an attempt to facilitate more effective communication of critical information to juries, but these jury-aids have been used in an ad-hoc, case by case basis (Ogloff et al., 2006). Jury acts and procedures in each state and territory vary somewhat (Goodman-Delahunty & Tait, 2006), and because of the increased variability in practices from one court to another, it is difficult to determine which procedures are routine in different jurisdictions. Ogloff et al. (2006) attempted to clarify this issue by surveying Australian and New Zealand judges. From the 185 completed surveys returned across Australia and New Zealand, Ogloff et al. (2006) established that of the respondents, the vast majority of judges allow jurors to take notes during the trial (84% from New Zealand, 71% from Australia). The practice of allowing transcript access however, is much less prevalent in Australia. Eighty eight percent of New Zealand judges provide jurors with a copy of the trial transcript, and their qualitative survey responses suggest that complete transcript access is becoming almost common practice. On the other hand, despite the existence of both common law and legislative authority to support the practice, only 40% of the Australian judges sampled allow transcript access. Only a small minority of Australian judges argued in favour of transcript access, indicating that it is absurd that the main fact finders in the trial do not have an accurate record of the evidence.

It is within the trial judge's power to allow additional noncontroversial materials prepared by counsel to be provided to jurors. In fact, it is common practice

in New Zealand for Crown counsel to prepare booklets for the jury containing a copy of the indictment, the list of witnesses, and plain English definitions of the charges. Sixty seven percent of New Zealand judges, compared to 13% of Australian judges, allow prosecutors to provide the jury with written information about the elements of the offences, and 65%, compared to 19% of Australian judges, allow a copy of the chronology of events. The majority of New Zealand respondents indicated that they provide the jury with written assistance about their summing up, but the responses from Australian judges varied dramatically by state. Fewer than half the judges in Queensland, Victoria and Western Australia provide such assistance, whereas approximately three quarters of judges in New South Wales (NSW), South Australia and Tasmania indicated that they do.

Despite the empirical support for the use of flowcharts or decision trees to assist jurors' comprehension of the law, the responses of the surveyed judges indicate that it is rare for such aids to be implemented, though New Zealand judges are more likely to incorporate such aids in their case summaries (Goodman-Delahunty & Tait, 2006). A different survey, conducted by Young (2004) revealed that as many as two thirds of surveyed New Zealand judges routinely provide flowcharts, decision trees or lists of questions to guide jurors in applying legal directions to the evidence.

There are also anecdotal accounts of more comprehensive approaches being taken by Australian judges. Eames (2003) described the typical approach of Justice Bernard Teague of the Supreme Court of Australia, who provides jurors with a printed overview of the case including a summary of the charge(s), a list of witnesses, and a document addressing the methodology they might employ in conducting their deliberations and determining the verdicts for each charge.

This survey project led Ogloff et al. (2006) to conclude that there is a very high level of inter-jurisdictional variation in the types of jury-aids implemented by

presiding judges, and a subsequent need for formal and objective evaluation of the types of written materials that are most useful to jurors. It is hoped that the additional empirical evidence regarding the efficacy of these particular jury-aids provided by the current study will help to encourage more systematic implementation between jurisdictions. These judicial surveys also reveal that judges are increasingly willing to provide jurors with tools to guide their decision-making (Goodman-Delahunty & Tait, 2006); in this climate of readiness, implementation of these reforms is perhaps more likely than ever, so clarification of the most efficacious jury-aids is a timely matter.

1.7 Current Study

Bearing in mind the so far promising assessments of alternatives to jurors' own notes in the literature, and the aforementioned justifications, continued investigation of the possibility of providing jurors with notes prepared by court officials and legal professionals seems a valuable research pursuit, particularly with more focus on the concept of combining several jury-aids rather than testing their efficacy in isolation. As indicated previously, not only do jurors need to understand the facts of the case to arrive at their decision, they must also have a sound comprehension of the relevant law and the judge's instructions (Ogloff et al., 2006; Ogloff & Rose, 2005). Court-prepared jury-aids theoretically provide a unique opportunity to improve jurors' ability to integrate the factual information with the relevant legal concepts, and address the lack of balance likely in jurors' own notes, by providing a more comprehensive presentation of both the facts and the law. The provision of notes would also serve to eliminate many of the potential drawbacks of juror notetaking, and facilitate repeated exposure that should assist understanding by allowing jurors to consume the material at their own pace and reread passages until

they are satisfied (Heuer & Penrod, 1989; Rose & Ogloff, 2001). Research in the area of cognitive psychology has amply demonstrated the benefits of both multiple exposure and written materials for improving comprehension (Craik & Lockhart, 1972; Nelson, 1977), and by making information more accessible and understandable, court-prepared jury-aids should also encourage jurors to engage in systematic, central route processing (Petty & Cacioppo, 1986).

The aim of this initial study, then, was to investigate a primarily applied question by focusing on the idea of providing jurors with a collection of court-prepared materials, and subjecting these to empirical examination to compare the benefits provided by such materials to those afforded by basic juror notetaking, and exploring possible synergistic effects of the two. The court-prepared materials consisted of some which have previously been exposed to empirical analysis, including a trial transcript, written copy of judicial instructions and verdict flowcharts. Two other materials - forms detailing the offence criteria and a chronology of events - were added. These materials are described in more detail in the Method section, but in brief, the forms detailing the offence criteria were designed as a different way of presenting the legal requirements contained within the written judicial instructions, by listing the particular elements needed to be proven beyond a reasonable doubt in order to find the accused guilty of that particular charge. They were more generic, less detailed, and formatted using a well-spaced bullet-point style. It was hoped that, like the verdict flowcharts, the more diagrammatic formatting and simplified nature of the information would aid in the comprehension of the legal concepts conveyed in the judicial instructions (Semmler & Brewer, 2002).

The chronology of events was designed as a summary of the important dates, and it was again hoped that this simplified presentation of information contained

elsewhere (namely in the trial transcript) would help give jurors an overall picture of the sequence of events. If this experiment demonstrated that this combination of alternatives offers similar, or greater, advantages to jurors as notetaking, such provided notes may act as potential substitutes where the drawbacks of notetaking present a significant concern.

To evaluate the benefits conferred by provided notes compared to jurors' own notes, a mixed factorial design was employed, manipulating the presence and absence of own and provided notes. Juror comprehension was assessed on two separate occasions; at Time 1 without access to the assigned note type(s) to measure possible encoding benefits offered by own notes, and at Time 2 with access to the assigned note type(s) to assess the benefits offered by actually reviewing the relevant materials.[1] The dependent measures used to assess juror comprehension of the facts and law, and ability to apply the law to novel situations were selected to assess juror comprehension, not recall, expediently and accurately. As explained above, the task of the juror is not to recall the content of the trial, but rather to understand it. In theory, the more details about the trial and the relevant law the juror is able to access and locate, whether in memory or elsewhere, the more information they will have available to them when making their final decision, thus their verdict should be better informed. Similarly, the more correct applications to novel scenarios that jurors are capable of, the greater their comprehension of the relevant law can be presumed to be. The very task facing jurors is to apply the law to a specific case, so an application or transfer measure is a particularly good way of assessing comprehension (Severance & Loftus, 1982). It has also been suggested that recall

[1] The design of the experiment will be discussed in further detail in the Method section, however a brief overview is included here with the aim of facilitating comprehensibility of the experimental hypotheses by providing the requisite background knowledge.

and application tests may be addressing different aspects of juror comprehension or learning, such that results from recall-type experiments may not generalise well to application-type real phenomena (Rose & Ogloff, 2001), so the inclusion of this type of measure addresses this issue.

Ideally, it would have been useful to separate each of the provided materials used in this study into different conditions, to further investigate the comparative benefits of each individual material type. There were, however, a number of reasons for not doing this in the current experiment. Firstly, the primary aim of this experiment was to assess the viability of a *package* of provided notes as an alternative to jurors' own notes. Secondly, limitations on time and participant availability were not conducive to conducting an experiment which looked at every possible combination of these various written materials. In the interests of giving some indication for areas of further research, however, jurors who received provided materials were required to rate how useful they found each separate component. In addition, the comparative efficacy of various combinations of the components of the provided notes package was explored in Experiment 2.

1.8 Hypotheses

Objective measures

Since the facts of the mock criminal trial participants were exposed to should not have generally required understanding of topics beyond typical everyday experience, it was expected that participants in the own notes present conditions would record useful notes containing probative information, which would be helpful for answering the fact questions on the questionnaire. Results of ForsterLee et al.'s (1994) experiment supported the encoding hypothesis (DiVesta & Gray, 1972), so it was also expected that participants in the own notes present conditions would

perform well on the fact questions, regardless of whether they had access to their own notes (Time 2) or not (Time 1). The provided notes contained all the information participants required to answer the fact questions, so when participants had access to these notes (at Time 2), it was anticipated that they would be able to engage in effortful processing by reviewing the relevant material at their own pace, and use the notes effectively in answering the fact questions (Cacioppo & Petty, 1979).

With these general principles in mind, a significant time by provided notes by own notes interaction was hypothesised: at Time 1, participants in the provided notes present-own notes present condition were expected to achieve significantly higher fact scores than participants in the provided notes present-own notes absent condition, due to the encoding advantage offered by own notes. At Time 2 however, no significant difference between the fact scores of these two participant groups was expected, because the introduction of the provided notes was predicted to enhance the performance of the provided notes present-own notes absent participants. For participants in the provided notes absent-own notes present condition, it was anticipated that the encoding advantage provided by taking notes would result in significantly higher fact scores at both Times 1 and 2, compared to those achieved by participants in the provided notes absent-own notes absent condition, who received neither the encoding benefit offered by taking one's own notes, nor the information contained within the provided notes.

It was expected that the relatively complex legal information presented throughout the mock criminal trial would constitute unfamiliar concepts to the ordinary lay participant. The subsequent lack of any relevant schema led to the expectation that participants in the own notes present conditions would have great difficulty integrating the legal information presented, and in turn, would record very

little, if any, relevant and useful information in the notes they took. As such, any encoding advantage offered by taking notes would also be lost insofar as the law questions were concerned. On the other hand, the provided notes again contained all the information participants required to answer the law questions, so when participants had access to those notes (at Time 2), it was anticipated that they would be able to engage in effortful processing by reviewing the relevant material at their own pace, and use the notes effectively in answering the law questions (Cacioppo & Petty, 1979).

Based on these general principles, a significant time by provided notes interaction was anticipated for the law score dependent variable. Presence of own notes was not expected to offer any encoding advantage where the law questions were concerned, so the difference between law scores of participants in the provided notes present and absent conditions was not expected to differ significantly at Time 1. At Time 2 however, participants' ability to use the information contained within the provided notes was expected to allow those in the provided notes present conditions to achieve significantly higher law scores than participants in the provided notes absent conditions. Again, since participants in the own notes present conditions were not expected to make note of legal concepts which would thus enhance their ability to answer the law questions, presence or absence of own notes was not expected to influence this result.

Scenario questions required participants to apply the understanding of the law they had gained via exposure to the mock criminal trial to novel scenarios. Since performance on these questions was ultimately based upon knowledge and understanding of the law of the case, the general predictions and hypotheses regarding scenario score questions were in line with those made regarding performance on the law questions.

A significant time by provided notes interaction was hypothesised. The difference between scenario scores of participants in the provided notes present and absent conditions was not predicted to differ significantly at Time 1, but at Time 2, participants in the provided notes present conditions were expected to use the relevant information contained within the provided notes to achieve significantly higher scenario scores than participants in the provided notes absent conditions.

Subjective measures.

Participants' verdict confidence ratings were intended to be determined by their perception of how certain they were that the verdict they had arrived at was the correct one. The encoding advantage offered by taking own notes was expected to encourage verdict confidence, as was access to the wealth of information contained within the provided notes.

A time by provided notes by own notes interaction was anticipated. At Time 1, regardless of presence or absence of provided notes, participants in the own notes present conditions were expected to return significantly higher verdict confidence ratings than participants in the own notes absent conditions. At Time 2, no significant differences between the confidence ratings of participants in the provided notes present and provided notes absent conditions were expected where own notes were also present. On the other hand, where own notes were absent, participants in the provided notes present condition were expected to rate their confidence as being significantly higher than participants in the provided notes absent condition.

Participants' verdict difficulty ratings were intended to be determined by their perception of how challenging the task of arriving at a verdict was. Participants were expected to use a combination of factual and legal information to arrive at a verdict, therefore both the encoding advantage offered by taking own notes, and access to the

information contained within the provided notes were expected to facilitate the decision-making process and lead to lower ratings of verdict difficulty. Since these basic predictions are in line with those made with respect to verdict confidence, the subsequent hypotheses follow a similar (though reversed) pattern.

A significant time by provided notes by own notes interaction was hypothesised for this measure. At Time 1, regardless of presence or absence of provided notes, participants in the own notes present conditions were expected to make significantly lower verdict difficulty ratings than participants in the own notes absent conditions. At Time 2, no significant differences were expected between the verdict difficulty ratings of the participants in the provided notes present and provided notes absent conditions where own notes were present, but where own notes were absent, participants in the provided notes absent condition were expected to rate verdict difficulty as being significantly higher than participants in the provided notes present condition.

Participants' law difficulty ratings were intended to be determined by their perception of how challenging it was to understand the legal concepts presented to them throughout the course of the mock trial. As mentioned previously, it was expected that participants in the own notes present conditions would record very little, if any, relevant and useful legal information in the notes they took. As such, any advantage offered by taking notes (encoding or otherwise) would also be lost. On the other hand, the provided notes contained all the information participants required to answer the law questions, so access to those notes was expected to facilitate understanding of the legal concepts and lead to lower ratings of law difficulty.

A significant time by provided notes interaction was expected for this measure: at Time 1, no difference between participants in the provided notes present

and provided notes absent conditions was anticipated (since the former had not yet accessed those notes), but at Time 2, participants with access to the provided notes were expected to make significantly lower ratings of law difficulty than participants in the provided notes absent conditions. The presence or absence of own notes was not expected to have any effect on ratings of law difficulty.

Utility measures.

Participants in the own notes present conditions were expected to record useful notes containing probative information which would be helpful for answering the fact questions on the questionnaire, however they were expected to record very little, if any, relevant and useful information about the law, due to their hypothesised lack of familiarity with legal concepts and subsequent difficulty integrating the legal information presented in the trial. Consequently, when evaluating the utility of their notes for each of the different question types (fact, law and scenario), a main effect for question type was hypothesised. Participants in the own notes present conditions were expected to assign significantly higher utility of own notes ratings for fact questions, than for law and scenario questions. No significant differences between the utility ratings assigned for law and scenario questions were expected.

Participants in the own notes present-provided notes present condition had the opportunity to evaluate their own notes against the provided notes. A main effect for condition was therefore expected, such that overall the utility of own notes ratings made by participants in the own notes present-provided notes present condition were expected to be significantly lower than those made by participants in the own notes present-provided notes absent condition. The pattern of utility ratings was not expected to differ by condition, so a question type by condition interaction was not expected.

While participants were expected to find each component of the provided notes useful, it was anticipated that those components which constituted a more direct representation of the information presented in the trial would be more easily accessible than components which had transformed the information in some way. As such, a main effect for component was hypothesised for the utility of provided notes measure, such that participants in both the provided notes present conditions would assign significantly higher utility ratings to the transcript, chronology and judicial instructions than to the offence criteria and flowcharts.

Participants in the provided notes present-own notes present conditions had the opportunity to compare the two note types, whereas participants in the provided notes present-own notes absent did not, but this comparison was not expected to affect perceptions of the utility of the provided notes, so a main effect for condition was not hypothesised. Similarly, the pattern of utility ratings was not expected to change across condition, so a nonsignificant condition by component interaction was also expected.

1.9 Method

Participants.

A total of 120 jury-eligible participants (52 males and 68 females, with a mean age of 47.8 years) completed the experiment, with 30 participants assigned to each condition. Participants were drawn largely from the current jury pool for Southern Tasmania at the Supreme Court of Tasmania. Once the selection of jurors for actual criminal trials was complete, interested jury pool members who had not been called to serve on a jury were invited to remain at the courthouse to take part in the experiment. A small incentive was offered; jury pool members were informed that, as a token of appreciation, participants would receive a voucher entitling them

to a free hot drink at a nearby café after the session. A small number of interested community members who responded to a newspaper article advertising the experiment also participated. All participants watched the trial DVD on a large screen in an unused courtroom at the Supreme Court of Tasmania. This experiment, and all others in this series, was conducted with full approval from the Tasmania Social Sciences Human Research Ethics Committee (Ethics Reference Number: H8849. See Appendix A for all Information and Consent forms).

Design.

This experiment employed a 2[provided notes: present or absent] x 2[own notes: present or absent] x 2(time: Time 1 or Time 2) mixed factorial design. The dependent variables measured included participant comprehension of facts of the trial, participant comprehension of the relevant law (measured by 15 multiple-choice questions for each[2]), and participant ability to apply the relevant law to novel situations, as tested by 10 short, written scenarios, with multiple-choice verdicts for each (Smith, 1991). Participants were also asked to arrive at a verdict for each charge, and rate how difficult they found the law to understand, how confident they were in their verdict, and how difficult it was to arrive at a verdict, on 7-point scales (1 = *not very difficult/confident*, 7 = *very difficult/confident*). Those participants in the provided notes conditions also rated the utility of each written material type on 7-point scales (1 = *not very useful*, 7 = *very useful*), and participants who took their

[2] This style of dependent variable would typically be regarded as a measure of recognition, but this was not the primary intention for this dependent variable in the current series of experiments. When participants completed the multiple choice questionnaire at Time 1, it constituted a recognition measure of sorts, however at Time 2, participants completed the questionnaire with reference to materials designed to assist their performance. Since participants were able to review these materials, it is difficult to conceptualise the questionnaire as a measure of recognition.

own notes rated the utility of their notes in helping them to answer the fact questions, law questions and scenarios respectively, on the same 7-point scales.

Materials.

A number of different materials were developed for use in this experiment.

Mock criminal trial.

Participants viewed a 55 minute DVD of a mock criminal trial. Many studies within this field of research utilise civil cases, but within the Australian justice system, jury trials are more common in criminal matters than civil ones (Goodman-Delahunty & Tait, 2006), hence the decision to use a criminal trial. This mock criminal trial was loosely based on the trial transcript obtained from the producer of "Secrets of the Jury Room" (Russel, 2004). With the producer's permission, this transcript of a two day mock criminal trial filmed in NSW for the purposes of a television documentary, was adapted by the experimenter. This involved altering the case so that the relevant law was consistent with the Tasmanian Criminal Code Act (1924), and editing the trial to create a script which was of a more manageable length, but which still contained much of the content of the original transcript. This was done in consultation with two legal academics, who had been studying, teaching and practising criminal law for a combined total of 23 years. Once a final script had been completed, this was sent to an additional seven currently practising criminal lawyers, to further ensure its legal accuracy and plausibility. The consensus among these lawyers was that although some procedural accuracy had been sacrificed for the sake of expediency (e.g., the trial did not include the swearing in of each witness as this would be too time-consuming and had little bearing on the content of the trial), the law itself was accurate, and the trial was a fair, if basic, representation of a real court case.

With legal accuracy established, the script was filmed over a period of four weeks. Members of the experimenter's circle of acquaintances acted as the individuals involved in the trial, and filming took place at the Hobart Penitentiary Chapel historic site, in a courtroom which is no longer in use. The footage was edited to create the final 55 minute mock criminal trial. The DVD depicts the trial of Jane Mitchell, a woman charged on two counts; the first charge was murder, and the second was an alternative charge of instigating or aiding suicide. Her partner, Stephen Taylor, was suffering the advanced stages of Motor Neurone Disease and had been seriously considering committing suicide to end his torment and avoid further loss of dignity. Shortly after a birthday party held in his honour, Stephen Taylor was found dead in his bedroom. The Crown case stated that the deceased had changed his mind about his desire to commit suicide, and was in fact murdered by Jane Mitchell, who was motivated by the financial gain she would secure upon his death. The defence, however, stated that there was no evidence to suggest that the deceased ever changed his mind about his wish to suicide, and that there was no reason to think that he had any assistance in carrying out this wish. The trial contained opening remarks from counsel for the defence and prosecution and testimony from the attending police officer, two medical expert witnesses, the deceased's daughter and the defendant. With the exception of one of the medical experts, all witnesses were subjected to cross-examination. The trial concluded with closing statements from both lawyers, as well as the judge's instructions to the jury (See Appendix B for a copy of the trial DVD).

Questionnaire.

The questionnaire participants completed consisted of 15 multiple-choice questions about the facts of the case, 15 multiple-choice questions about the law of

the case (Part A), 10 multiple-choice scenarios requiring participants to apply the law they had learned about in the case to novel situations (Part B), and several rating scales (Part C), as described above. Participants were also required to reach a verdict for each of the two charges (Part C).

A number of fact questions and subsequent answer alternatives were developed, and law questions and novel scenarios were developed in consultation with the previously mentioned legal academics, to ensure legal accuracy and eliminate ambiguity. The fact questions were designed to focus on information which would be particularly pertinent to a final decision about the case (e.g., times, dates and sequencing of important events, important factual conclusions made by expert witnesses), and the law questions centred around fundamental legal principles (e.g., the burden and standard of proof, role of the judge and jury) and elements of the specific charges in this case. Both types of question were forced-choice questions with one correct answer and three plausible alternatives, and were designed to emphasise comprehension rather than mere rote memory; as much as possible the participant required a more elaborated understanding of the factual point or legal concept in order to select the correct response.

The scenario questions presented a brief description (between 80 and 140 words) of a set of circumstances leading to a specified criminal charge, and listed four possible choices of verdicts combined with the reasoning for that particular verdict. The scenario questions were designed this way to ensure that participants could not simply guess the correct verdict using common sense, but rather needed to apply their knowledge of the relevant legal concepts to determine both the most appropriate verdict and the correct reason for arriving at this verdict.[3] These

[3] It could be argued that there are no external criteria for determining the "correct" verdict in a criminal case. For the purpose of the scenario questions, any possible ambiguity was removed from

questions and scenarios were informally piloted on a small sample of participants, whose responses led to the elimination of some questions and modification of others, thus resulting in the creation of the final question set. Law questions and fact questions were combined in a random order to comprise Part A of the questionnaire. The sections of the questionnaire and the questions within them always appeared in the same order. (See Appendix C for a copy of the questionnaire).

Notetaking materials.

All participants in the notetaking conditions were provided with a white A4 pad of lined paper and a ball-point pen.

Provided notes.

Provided notes consisted of a trial transcript, a written copy of the judicial instructions, a chronology of events, offence criteria, and verdict flowcharts. The trial transcript (a 17 page document) and judicial instructions[4] (a two page document) were transcribed from the DVD of the mock criminal trial. The chronology of events listed several undisputed key dates from the case which were mentioned in the trial, listing the date itself next to a brief description of the relevant event. The offence criteria firstly stated the charge as it appears in the Tasmanian Criminal Code Act (1924), and then broke that offence down into the separate elements which needed to

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the brief case descriptions, so that the most legally correct verdict could be objectively determined from the given choices.

[4] As discussed previously, there is a great deal of research investigating the possibility of improving comprehensibility of judicial instructions by simplifying the language in which they are presented. It should be noted that the judicial instructions utilised in this series of experiments were not altered in any way to enhance their comprehensibility. The judicial instructions comprised both procedural and substantive instructions.

be established in order for that offence to be proved. Finally, the verdict flowcharts were based on examples of real flowcharts used in some actual Australian and New Zealand trials, which utilise the essential elements of each charge to pose a number of forced-choice yes/no questions to the jury member, eventually leading to a verdict. Both the offence criteria and the verdict flowcharts were once again created with the assistance of the same two legal academics to ensure legal accuracy. Provided notes were given to participants in a bundle, with each separate document clearly labelled. (See Appendix D for a copy of the materials which constituted the provided notes).

Procedure.

Following explanation of the nature of the experiment, participants gave written consent, and were randomly assigned to one of the four conditions. All participants were informed that the trial they would be observing was based on a real trial which occurred in NSW, and that some procedural details (e.g., the swearing in of each witness) had been left out for practical reasons. It was made clear to all participants that following their viewing of the mock criminal trial, they would be required to answer written questions about the facts and law of the case, and reach a verdict as an individual. Participants in the provided notes absent-own notes absent condition were told that they could not take notes, as this might distract them. Participants assigned to the own notes present conditions were instructed that they were able to take notes throughout the trial using the materials provided. Those assigned to the provided notes present conditions were informed that they would receive some written materials at the conclusion of the trial to assist in their decision-making (See Appendix E for a copy of the standardised participant instructions for each condition). Participants then watched the mock criminal trial.

Following this, all participants completed the questionnaire for the first time without the assistance of any notes. Once the first questionnaire had been completed, participants in the provided notes present conditions were given 5 minutes to familiarise themselves with the set of notes provided to them, and participants in the own notes present conditions were encouraged to review their own notes, while those in the provided notes absent-own notes absent condition were asked to reflect on the content of the case for 5 minutes. All participants then completed the questionnaire a second time; those in the own and/or provided notes present conditions were allowed access to the relevant notes while completing the questionnaire, and were urged to check the accuracy of their answers using the notes. Participants did not have access to their first questionnaire while completing the second.

1.10 Results

Objective measures of comprehension.

From the questionnaire responses, total fact, law and scenario scores were calculated for each participant, by awarding correctly answered items one point, and incorrect responses zero points. Due to their objective nature, these dependent variables measuring comprehension were analysed separately from the subjective ratings made by participants regarding their degree of confidence and perceptions of task difficulty.

A doubly multivariate analysis of variance (MANOVA) was conducted as the initial analysis, with provided notes and own notes as between subjects factors, and time as a within subjects factor. The data for all experiments in the series was analysed using version 17 of the Statistical Package for the Social Sciences (SPSS), with an alpha level of .05. Effect sizes were reported using Partial Eta Squared. The MANOVA revealed a significant main effect for provided notes, Wilk's $\Lambda = .68$,

$F(3, 114) = 18.20$, $p < .001$, $\eta^2_p = .32$, a significant main effect for time, Wilk's $\Lambda = .32$, $F(3, 114) = 82.80$, $p < .001$, $\eta^2_p = .69$, and a significant Time x Provided Notes interaction, Wilk's $\Lambda = .39$, $F(3, 114) = 59.05$, $p < .001$, $\eta^2_p = .61$. No effects involving the own notes factor were significant. The main effect for own notes was nonsignificant, Wilk's $\Lambda = .96$, $F(3, 114) = 1.51$, $p = .28$, as were the Provided Notes x Own Notes and Time x Own Notes interactions, Wilk's $\Lambda = .95$, $F(3, 114) = 1.92$, $p = .13$ and Wilk's $\Lambda = .97$, $F(3, 114) = 1.34$, $p = .26$, respectively. The Time x Provided Notes x Own Notes interaction was also nonsignificant, Wilk's $\Lambda = .94$, $F(3, 114) = 2.35$, $p = .08$. The subsequent univariate analyses of variance (ANOVAs) for each dependent variable will be dealt with in turn.

Fact score.

The univariate tests revealed a significant main effect for time, $F(1, 116) = 245.24$, $p < .001$, $\eta^2_p = .68$, and for provided notes, $F(1, 116) = 54.85$, $p < .001$, $\eta^2_p = .32$, and a significant Time x Provided Notes interaction, $F(1, 116) = 370.02$, $p < .001$, $\eta^2_p = .58$, as shown in Figure 1.

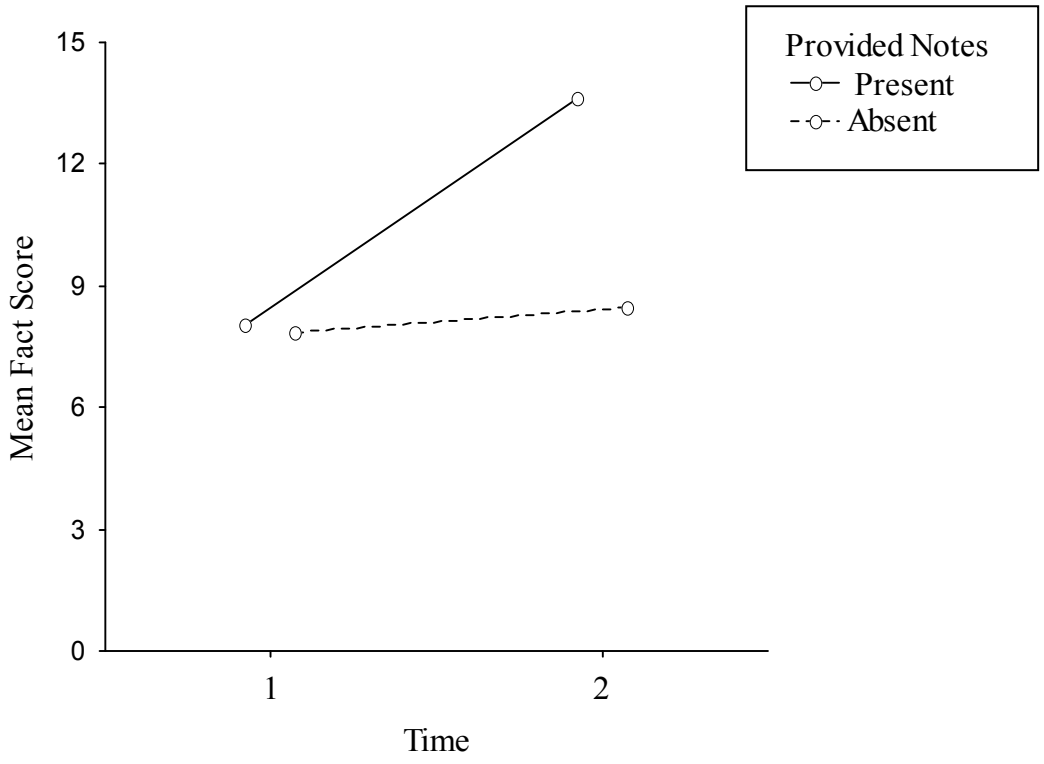

Figure 1. Mean fact scores for provided notes present and absent at Times 1 and 2. Points are offset horizontally for clarity.

A breakdown analysis of the Time x Provided Notes interaction was performed with a Bonferroni corrected alpha of .025, revealing that while there was no difference between participants' fact scores at Time 1, $t(118) = 0.46$, $p = .65$, equal variances assumed, participants in the provided notes present conditions achieved significantly higher fact scores at Time 2 than participants who did not have access to provided notes, $t(92.1) = 13.27$, $p < .001$, equal variances not assumed. Finally, the Time x Provided Notes x Own Notes interaction was significant, $F(1, 116) = 5.28$, $p < .05$, $\eta^2_p = .04$, as shown in Figure 2, however since the multivariate tests did not also reveal this same interaction to be significant, this result can only be interpreted with caution (Tabachnick & Fidell, 2006).

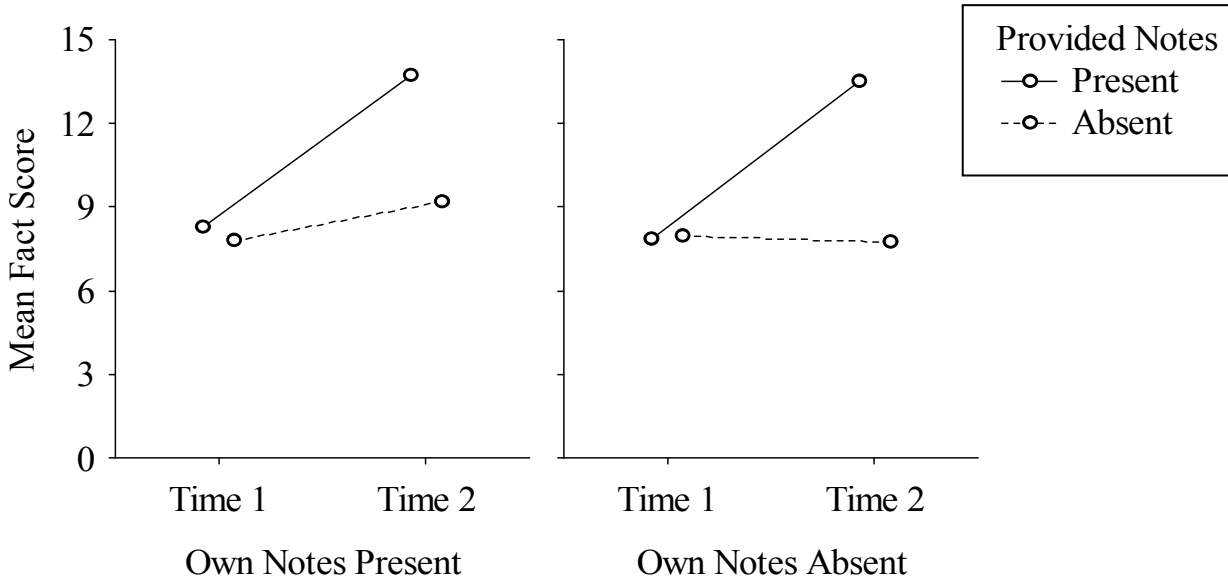

Figure 2. Mean fact score for own notes present and absent at Times 1 and 2. Points are offset horizontally for clarity.

The figure indicates that regardless of whether participants had access to their own notes, there was no significant difference between the fact scores of participants in the provided notes present condition. However, where participants did not have access to provided notes, participants with access to their own notes achieved significantly higher fact scores at Time 2 than participants who did not have access to their own notes, $t(49.2) = 2.17$, $p < .05$, equal variances not assumed. In addition, a paired samples *t*-test revealed significantly higher fact scores were observed at Time 2 compared to Time 1 for participants in the own notes present-provided notes absent group, $t(29) = -2.99$, $p < .01$.

Law score.

The univariate tests revealed a significant main effect for time, $F(1, 116) = 12.55$, $p < .01$, $\eta^2_p = .10$, and for provided notes, $F(1, 116) = 9.10$, $p < .01$, $\eta^2_p = .07$,

and a significant Time x Provided Notes interaction, $F(1, 116) = 19.72$, $p < .001$, $\eta^2_p = .15$, as shown in Figure 3.

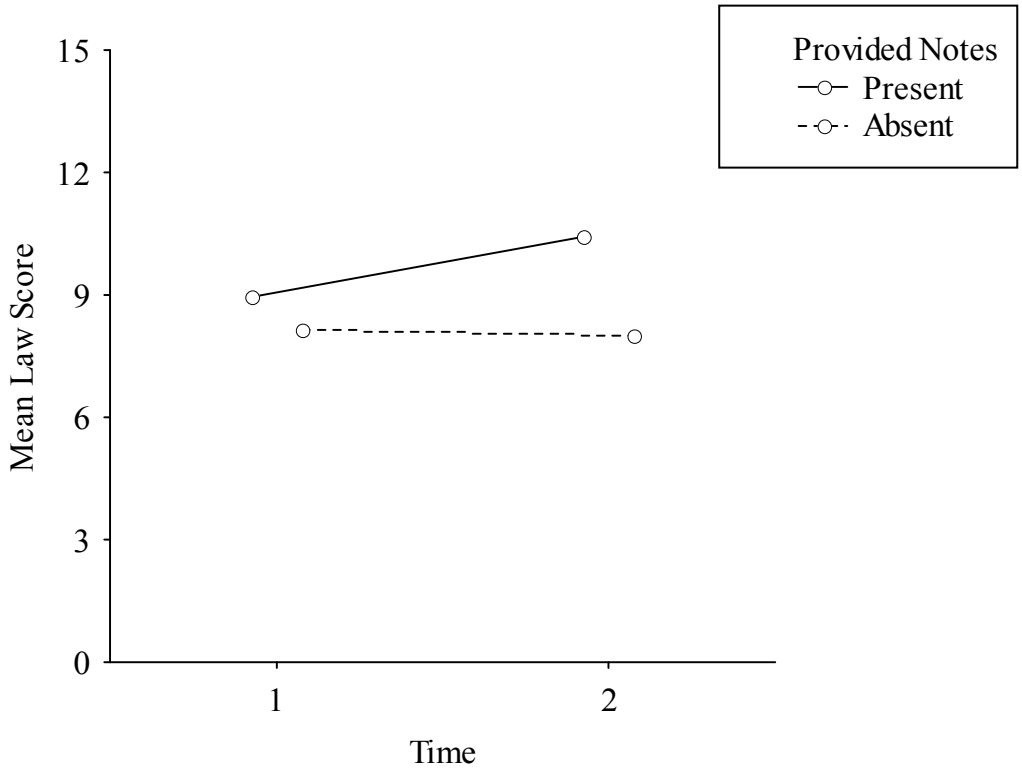

Figure 3. Mean law scores for provided notes present and absent at Times 1 and 2. Points are offset horizontally for clarity.

A breakdown analysis of the Time x Provided Notes interaction was performed with a Bonferroni corrected alpha of .025 and showed that while there was no difference between participants' law scores at Time 1, $t(118) = 1.36$, $p = .18$, equal variances assumed, participants in the provided notes present conditions achieved significantly higher law scores at Time 2 than participants who did not have access to provided notes, $t(107.3) = 4.36$, $p < .001$, equal variances not assumed.

Scenario score.

Although the Time x Provided Notes interaction was nonsignificant, $F(1, 116) = 0.12$, $p = .73$, the univariate tests revealed a significant main effect for provided notes, $F(1, 116) = 6.43$, $p < .05$, $\eta^2_p = .05$, such that overall, participants in the provided notes present conditions achieved significantly higher scenario scores than participants in the provided notes absent conditions. See Table 1 for mean scenario scores. The scenario score measure returned no other significant results.

Table 1

Mean Scenario Scores for Participants in the Provided Notes Present and Absent Conditions

Condition	Time	*M*	*SD*	*n*
Provided Notes Present	Time 1	7.37	1.51	60
	Time 2	7.48	1.74	60
Provided Notes Absent	Time 1	6.57	1.78	60
	Time 2	6.77	2.00	60

Subjective ratings.

As described previously, participants' subjective ratings (verdict confidence, verdict difficulty, and law difficulty) were analysed separately from the objective measures of participant comprehension.

A doubly multivariate analysis of variance was conducted, with provided notes and own notes as between subjects factors, and time as a within subjects factor. The MANOVA revealed a significant Time x Provided Notes x Own Notes interaction, Wilk's $\Lambda = .92$, $F(3, 114) = 3.34$, $p < .05$, $\eta^2_p = .08$. No other results were significant. The main effects for provided notes, own notes and time were all

nonsignificant, Wilk's $\Lambda = .99$, $F(3, 114) = 0.52$, $p = .67$, Wilk's $\Lambda = .99$, $F(3, 114) = 0.49$, $p = .69$, and Wilk's $\Lambda = .99$, $F(3, 114) = 0.42$, $p = .74$, respectively. The Provided Notes x Own Notes, Time x Provided Notes and Time x Own Notes interactions were also nonsignificant, Wilk's $\Lambda = .97$, $F(3, 114) = 1.21$, $p = .31$, Wilk's $\Lambda = .98$, $F(3, 114) = .75$, $p = .52$, and Wilk's $\Lambda = .98$, $F(3, 114) = 0.88$, $p = .45$, respectively.

The subsequent univariate ANOVAs for each dependent variable indicated that the Time x Provided Notes x Own Notes interaction was only significant for participants' ratings of law difficulty, $F(1, 116) = 6.45$, $p < .05$, $\eta^2_p = .05$, as shown in Figure 4. The Time x Provided Notes interaction for ratings of law difficulty was nonsignificant, $F(1, 116) = 0.84$, $p = .36$, as were the Time x Provided Notes x Own Notes interactions for ratings of verdict confidence and verdict difficulty, $F(1, 116) = 0.002$, $p = .97$, and $F(1, 116) = 1.72$, $p = .19$, respectively.

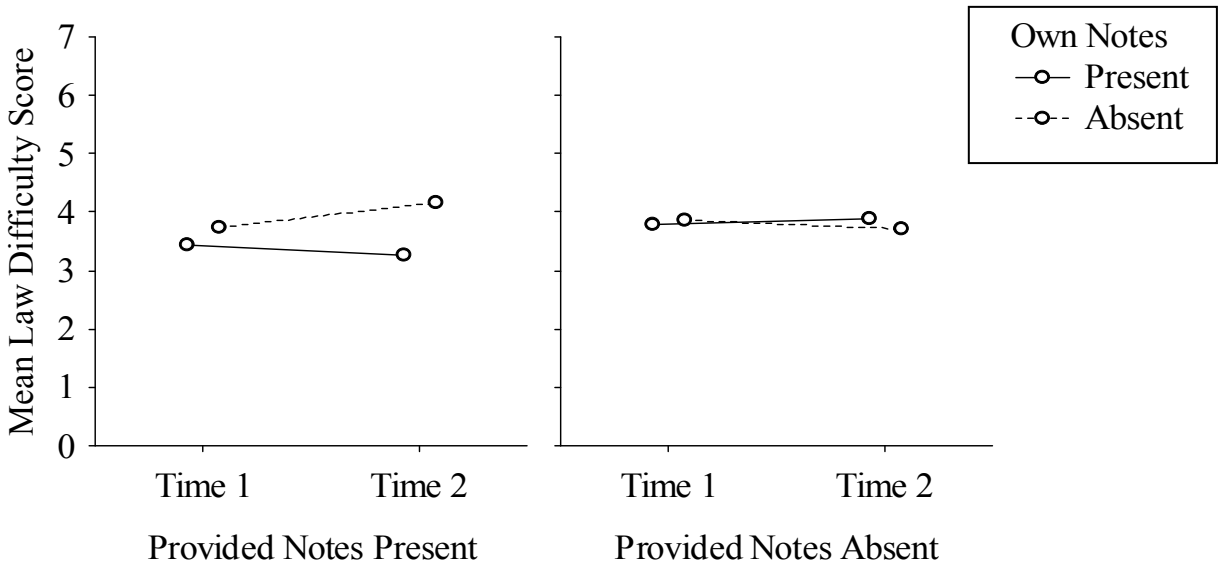

Figure 4. Mean law difficulty ratings for provided notes present and absent at Times 1 and 2. Points are offset horizontally for clarity.

From the graph, it is clear that there were no differences between groups when provided notes were absent. But, where participants did have access to provided notes, a breakdown analysis performed with a Bonferroni corrected alpha of .025 showed that at Time 1, there were no significant differences between participants' ratings of law difficulty, t(58) = -0.78, p = .44, equal variances assumed, while at Time 2 participants who also had access to their own notes rated the law as being significantly less difficult to understand than participants who had access to the provided notes alone, t(58) = -2.30, p = .025, equal variances assumed.

Utility ratings.

Own notes.

Because participants only rated the utility of the materials they had access to, analysis of these ratings occurred separately. A repeated measures ANOVA was conducted with condition as a between groups variable and question type as a within groups variable, to compare utility ratings of own notes for participants who had access to own notes alone and participants who had access to both own and provided notes. Greenhouse Geisser corrections were used where appropriate.

The ANOVA revealed a significant main effect for question type, F(1.8, 106.0) = 16.98, p < .001, η^2_p = .23, however the Question Type x Component interaction was nonsignificant, F(1.8, 106.0) = 1.08, p = .34. See Table 2 for mean utility scores.

Table 2

Mean Utility Ratings of Own Notes for Each Question Type

Question Type	*M*	*SD*	*n*
Fact Questions	3.63	1.45	60
Law Questions	3.10	1.55	60
Scenario Questions	2.53	1.35	60

Bonferroni adjusted pairwise comparisons revealed that overall, participants in both conditions rated their own notes as being significantly more useful for answering questions about the facts of the case, than for answering questions about the law ($p < .05$), or scenario questions ($p < .001$). They also indicated that their notes were significantly more useful for answering questions about the law than for answering scenario questions ($p < .01$).

It should be noted that the 7-point rating scale ranged from 1 (*not very useful*) through to 7 (*very useful*). These means indicate that participants overall rated their own notes as being, at best, moderately useful. Although the main effect for condition was nonsignificant, a trend for participants who had access to own notes alone to return higher ratings of utility of own notes than participants who had access to both own and provided notes was also recorded, $F(1, 58) = 3.77$, $p = .057$.

For participants in the own notes present conditions, the number of pages of notes taken was recorded, and the mean calculated. Participants took a mean 4.23 pages of notes ($SD = 2.44$). An independent samples *t*-test was used to compare the mean number of pages taken by participants who had access to their own notes alone, and by participants who had access to both their own notes and the provided notes. This revealed that participants in the own plus provided notes group wrote significantly more pages of notes ($M = 4.90$, $SD = 2.09$) than participants in the own

notes alone group (M = 3.55, SD = 2.60), $t(58) = -2.22$, $p < .05$, equal variances assumed.

Provided notes.

A repeated measures ANOVA was conducted, with condition as a between groups variable and component as a within groups variable, to compare utility ratings of the provided notes for participants who had access to provided notes alone and participants who had access to both own and provided notes. The ANOVA revealed a significant main effect for component, $F(2.6, 149.6) = 21.0$, $p < .001$, $\eta^2_p = .27$. Both the main effect for condition and the Component x Condition interaction were nonsignificant, $F(1, 58) = 0.50$, $p = .48$ and $F(2.6, 149.6) = 0.93$, $p = .42$, respectively. Bonferroni adjusted pairwise comparisons indicated that there were no significant differences between participants' utility ratings of the transcript ($p > .05$), the chronology of events ($p > .05$), the judicial instructions ($p > .05$), and the offence criteria ($p > .05$). However, participants overall rated the flowcharts as being significantly less useful than all other components ($p < .001$). See Table 3 for mean utility ratings.

Table 3

Mean Utility Ratings for Each Provided Notes Component

Component	*M*	*SD*	*n*
Transcript	5.83	1.10	60
Chronology	5.93	1.08	60
Offence Criteria	5.83	1.22	60
Flowcharts	4.18	1.99	60
Judicial Instructions	5.70	1.19	60

As indicated above, when these ratings are considered in the context of the scale labels (1 = *not very useful*, 7 = *very useful*), these means indicate that overall, participants rated all components of the provided notes (excluding the flowcharts) as being in the very useful range. The component which received the lowest utility rating, the flowcharts, was still rated as being moderately useful overall.

Own notes versus provided notes.

Participants were not asked to provide a single global rating of the utility of their own notes, or the utility of the provided notes. So, to determine whether provided notes received overall higher mean utility ratings than own notes, the three utility ratings for own notes and five utility ratings for provided notes were each averaged into two global measures of utility. A paired samples *t*-test was conducted to compare these global measures for participants who had access to both own and provided notes, revealing that overall, participants rated the provided notes (M = 5.43, SD = 0.70) as being significantly more useful than their own notes (M = 2.80, SD = 1.28), $t(29) = -10.42$, $p < .001$. An independent samples *t*-test was conducted to compare the global utility ratings for participants who had access to own notes only, and provided notes only. Again, this revealed that participants rated provided notes (M = 5.57, SD = 0.83) as being significantly more useful than their own notes (M = 3.38, SD = 1.01), $t(58) = -9.18$, $p < .001$, equal variances assumed. It should, however, be noted that this latter analysis is less reliable because there is no guarantee that participants in the separate conditions were utilising comparable subjective rating scales to indicate utility.

Verdicts.

Frequencies and percentages of participants choosing guilty and not guilty verdicts were calculated for both the murder charge and the suicide charge at Time 1 and Time 2, and are displayed in Table 4.

Table 4

Murder and Suicide Verdict Frequencies and Percentages at Times 1 and 2

Verdict	Murder Charge		Suicide Charge	
	Time 1	Time 2	Time 1	Time 2
Guilty	2 (1.7%)	4 (3.3%)	30 (25%)	35 (29.2%)
Not guilty	118 (98.3%)	116 (96.7%)	90 (75%)	85 (70.8%)

The frequencies of verdict changes in either direction (guilty to not guilty, and not guilty to guilty) were not large enough to justify further statistical investigation.

1.11 Discussion

Objective measures.

Fact score.

For fact score, a significant time by provided notes by own notes interaction was predicted, however the results revealed a significant time by provided notes interaction. The encoding advantage offered by own notes was expected to lead to significantly higher fact scores for participants in the own notes present conditions than participants in the own notes absent conditions at Time 1. However, results revealed no significant differences between fact scores at Time 1, suggesting that own notes did not confer any detectable advantage during the encoding phase.

At Time 2, results indicated that participants in the provided notes present conditions achieved significantly higher fact scores than participants who did not have access to provided notes, regardless of the presence or absence of own notes. It should be noted that the univariate time by provided notes by own notes interaction was found to be significant, but the extent to which this can be reliably interpreted is uncertain, as the corresponding multivariate test was nonsignificant. Nonetheless, this significant univariate result revealed that where participants did not have access to provided notes, participants with access to their own notes achieved significantly higher fact scores at Time 2 than participants who did not have access to their own notes. This result tentatively suggests that jurors' own notes were better than no notes at all. Significantly higher fact scores at Time 2 as compared to Time 1 for participants in the own notes present-provided notes absent condition also suggested that in order to reap the benefits of their own notes, participants needed to have access to them. This seems to indicate that participants indeed record more than they are able to encode.

Overall, contrary to expectations, these results revealed that jurors allowed access to provided notes achieved higher scores on multiple-choice questions regarding the facts of a mock criminal trial than jurors given access to their own notes. This suggests that even for a component of the trial we would assume should be more straightforward for jurors to understand (Smith, 1991), jurors' own notes are not as comprehensive as court-provided materials. The fact that access to own notes was better than access to no notes at all suggests that even if participants do not encode the information contained within their notes, they are at least able to use the material recorded as a memory supplement to assist them in answering multiple-choice questions.

Of course, it must be acknowledged that the results of the current study do not allow further elucidation of the reason behind these performance discrepancies. It may be that enhanced systematic processing due to repeated exposure and opportunity to review relevant materials constituted the source of the advantage conferred by the provided notes (Petty & Cacioppo, 1986). On the other hand, the divided attention required for participants to engage in two cognitively demanding tasks (listening to the trial and actively taking notes) may have consumed resources of notetaking participants (ForsterLee et al., 2005), or there may have been some interference caused by participants listening to the trial and simultaneously trying to process its content by taking notes (Peters, 1972). Alternatively, notetaking participants may have experienced difficulty keeping pace with the trial, they may have recorded information inaccurately or illegibly, or may have been unsure regarding which pieces of information were most relevant, among many other possible explanations. It should be noted that the lack of significant difference between the performance of participants in the own notes conditions and provided notes conditions at Time 1, suggests that even though own notes did not offer any encoding advantage, they did not cause any appreciable disadvantages, so any interference occurring as a result of the dual-tasking did not result in detectably poorer performance.

The results for this measure are not consistent with ForsterLee et al.'s (1994) findings. Comparing a group of notetaking jurors who were allowed access to their notes while making their decision with a group of notetaking jurors who were not allowed such access, ForsterLee et al. (1994) found no significant differences between the performance of the two groups, leading them to conclude that the benefits of notetaking occur during the encoding process. The results of the current experiment provided no evidence for a notetaking encoding advantage; notetakers

performed no better than non-notetakers when they did not have access to their notes, and only performed fractionally better than non-notetakers even when they did have access to their notes. The difference in their performance when they had access to their notes, compared to when they did not certainly suggests that access to notes was an important element in the minimal assistance they seemed to provide. Although this result does not provide evidence for the external review hypothesis (as participants in the current experiment had access to their notes while completing the comprehension task, so this was not a recall test), it fails to provide evidence for the encoding hypothesis (DiVesta & Gray, 1972).

One potential explanation for this difference in outcome between the current study and ForsterLee et al.'s (1994) experiment may be attributed to the different tasks participants completed to test their recall and understanding. ForsterLee et al. (1994) employed a recall measure requiring jurors to record as many trial events as could be remembered, and rated these responses for relevance of content. This is a much more indirect measure of comprehension than requiring participants to answer multiple-choice questions about specific points of fact.

There is also some disparity between the results of the current experiment and the findings of Horowitz and ForsterLee (2001). Examining the efficacy of own notes compared to transcript access, Horowitz and ForsterLee found that notetaking juries, regardless of whether or not they also had transcript access, were able to appropriately distinguish between four differentially worthy plaintiffs, and made fewer errors on a recognition task. Access to a trial transcript therefore seemed to provide no additional benefit. This result is almost the direct reverse of the findings of the current experiment, however there are two main differences between the experiments which must be noted. Firstly, in Horowitz and ForsterLee's experiment the task measuring comprehension and recall was again quite different; participants

were required to distinguish between differentially worthy plaintiffs and complete a recognition task, which required participants to distinguish trial facts from plausible lures. As above, this is a much less direct measure of recall and comprehension. Secondly, participants in Horowitz and ForsterLee's experiment were only given access to the trial transcript. In the current experiment, the provided notes constituted not only a trial transcript, but a number of other supplementary materials, potentially explaining the significant advantage observed for participants in the provided notes present conditions over the provided notes absent conditions.

Law score.

Results for this dependent variable were as predicted. The recorded time by provided notes interaction revealed that while there was no difference between participants' law scores at Time 1, participants in the provided notes present conditions achieved significantly higher law scores at Time 2 than participants who did not have access to provided notes.

Because of the more complex nature of the legal information, and participants' presumed lack of familiarity with such concepts, participants' own notes were not expected to provide any benefits for answering questions regarding the law of the case (Bartlett, 1932; Ellsworth & Reifman, 2000), and the results reveal that they did not. On the other hand, as demonstrated by the results, it was expected that participants would be able to make use of the legal information recorded in the provided notes, and use this effectively when answering the questions. Again, it is difficult to identify the precise psychological mechanisms underlying this effect; perhaps participants simply failed to record any information about the law in their own notes, or they may have recorded it inaccurately, or were unable to interpret the information in their notes due to lack of context or incomplete

recording. Alternatively, by allowing the opportunity to review material and presenting the legal information in a format that was accessible and understandable, the provided notes may have encouraged participants to expend considerable cognitive effort and engage in systematic processing of the material (Petty & Cacioppo, 1986). Regardless, the results clearly indicate that when it comes to answering questions regarding legal issues, court-prepared provided materials confer a greater advantage than jurors' own notes.

Scenario score.

A significant time by provided notes interaction was anticipated for this measure, but this prediction was not borne out by the results. Instead, the results revealed a significant main effect for provided notes, such that overall, participants in the provided notes present conditions achieved significantly higher scenario scores than participants in the provided notes absent conditions. The failure to record an interaction with time suggests that this result was observed regardless of whether participants actually had access to the provided notes, suggesting that this result was not a function of participants' use of the material contained within the provided notes.

This is a difficult result to explain. Since the novel scenarios involved quite different sets of circumstances, and made no explicit reference to the case participants had observed, it may be that participants did not believe that their own notes or the provided notes would be helpful in trying to answer these questions and therefore did not make use of them. Although this explains the apparent failure to record any significant discrepancies between Time 1 and Time 2 performance of participants in the provided notes present conditions, this explanation does not clarify why participants in the provided notes present conditions achieved significantly

higher scenario scores than participants in the provided notes absent conditions at Time 1, when no participants had access to any notes. It could be argued that despite random allocation to experimental groups, participants in the provided notes conditions had some kind of educational advantage over the other participants, but this advantage was not apparent on any of the other dependent variables at Time 1, so this isn't a satisfactory explanation either.

Perhaps, then, this unexpected and perplexing result points to a problem with this particular dependent variable. Constructing the scenarios and compiling four alternative choices which all referred to legal concepts the participants were familiar with as a result of their exposure to the mock trial, was a difficult task. The narrow range of legal concepts which could be incorporated may have meant that the correct response could be determined using common sense alone. Some jurors enter the courtroom with basic ideas regarding legal concepts due to collected experiences resulting from actual and fictional depictions in the media and conversations with others (Lieberman, 2009; Smith, 1993), so it is possible that jurors were utilising this "commonsense justice" (Finkel, 1995) when responding to the scenario questions. It is still unclear why one particular group of participants should possess more commonsense legal knowledge than others.

Interestingly, Semmler and Brewer (2002) recorded difficulties with their use of novel scenario measures. Despite participants with access to flowcharts and written summaries of judicial instructions demonstrating an improved ability to describe the elements of self-defence, when required to apply their knowledge of self-defence to novel scenarios, participants performed relatively poorly across all conditions. Wiggins and Breckler (1990) also reported that although jurors receiving special verdict forms performed significantly better than jurors in the general verdict condition on questions regarding the burden of proof, there was no difference

between the groups on a novel scenario application measure. Also, Smith (1991) found that participants receiving both pre- and postinstruction achieved significantly higher scores on a measure of their ability to apply the law to the instant case than participants who were preinstructed only, postinstructed only, or not instructed at all, however neither the presence nor timing of instructions influenced scores on a novel application measure. Perhaps the consistent difficulties with these application measures across these studies, including the current experiment, suggest a potential limitation of the benefits conferred by various jury-aids. It is possible that participants are able to use the information contained within these aids to facilitate their basic understanding of various legal concepts, but are unable to develop a more elaborated understanding of the law which would enable them to extrapolate the information and apply it to novel scenarios.

Subjective measures.

Participants were expected to use a combination of factual and legal information to arrive at their verdict, therefore both the encoding advantage offered by taking notes, and access to the information contained within the provided notes were expected to lead to higher ratings of verdict confidence, and lower ratings of verdict difficulty. Time by provided notes by own notes interactions were hypothesised for both of these measures, but no significant results were returned. This indicates that participants' perceptions of verdict confidence and difficulty did not differ detectably as a function of note type, or note access.

Participants in the own notes present conditions were expected to experience great difficulty integrating the legal information presented, and record very little relevant and useful information in the notes they took. On the other hand, the provided notes contained all the information participants required to answer the law

questions, so access to those notes was expected to facilitate understanding of the legal concepts and lead to lower ratings of law difficulty. A time by provided notes interaction was expected, but results revealed a significant time by provided notes by own notes interaction: where participants had access to provided notes, there were no significant differences between participants' ratings of law difficulty at Time 1, while at Time 2 participants who also had access to their own notes rated the law as being significantly less difficult to understand than participants who had access to the provided notes alone.

It is difficult to propose an explanation for this result. Perhaps access to two jury-aids (both own and provided notes) was perceived as lowering law difficulty more than access to only one jury-aid. Considering, however, that the previous outcomes from this experiment have not provided any evidence in support of the utility of participants' own notes for answering law questions, this seems unlikely.

Alternatively, it is possible that the unexpected results for each of the three subjective measures highlights problems with these particular dependent variables. The measures may not be sufficiently discriminating, or may be problematic simply due to their subjective and noncomparative nature. Participants experienced one set of conditions in this experiment, and their subsequent inability to compare this experience with any similar events may have contributed to the lack of discrimination within the subjective ratings. Previous studies in the area have successfully made use of similar subjective measures which have returned significant results (e.g., Heuer & Penrod, 1994), while other studies have utilised subjective measures which focus more on satisfaction levels (e.g., ForsterLee et al., 2005; Heuer & Penrod, 1988). Perhaps the subjective measures in the current experiment would have yielded more valuable results had they also focused on a more intrinsic evaluation of individual satisfaction rather than on participants' perceptions of the

task itself. Interestingly, Heuer and Penrod's (1988) field study made use of subjective rating scales similar to those utilised in the current study, investigating law difficulty and verdict confidence, and found no significant differences as a result of their notetaking manipulation. The only key difference here is that Heuer and Penrod (1988) also failed to record any significant differences in their objective measure of comprehension, which was not the case in the current experiment. Other experiments have recorded discrepancies between jurors' perceptions and their actual performance, but in the opposite direction; jurors' perceptions of the efficacy of a decision-making innovation are not always reflected in the quality of their decision (Kerr, Niedermeier, & Kaplan, 1999).

Utility ratings.

For participants evaluating the utility of their own notes for each of the different question types (fact, law and scenario), a main effect for question type was hypothesised. The results supported this hypothesis, revealing that participants in the own notes present conditions rated their own notes as being significantly more useful for answering questions about the facts of the case, than for answering questions about the law, or scenario questions. This suggests that, consistent with the general predictions, participants in the own notes present conditions felt that they were able to record relatively useful notes containing probative information which would be comparatively helpful for answering fact questions (even though this did not necessarily translate into a meaningful difference on the objective measures). This result also suggests that participants' notes contained much less, if any, useful information regarding the legal concepts presented in the case, either because participants underestimated the importance of the legal information and did not see it as their responsibility to make note of such concepts, or because their lack of

familiarity with legal concepts made it particularly difficult to integrate and record such information (Bartlett, 1932; Ellsworth & Reifman, 2000; Smith, 1991). Interestingly, the mean utility rating participants assigned their own notes for assisting with the fact questions (the area in which own notes were deemed as being most useful) was 3.63 out of a possible 7 points, so on average participants still only rated their own notes as being, at best, moderately useful.

Contrary to the expectation that there would be no significant differences between the utility ratings assigned for law and scenario questions, participants also indicated that their notes were significantly more useful for answering questions about the law than for answering scenario questions. Perhaps participants did record some information relating to relevant legal concepts in their notes, but this information was not detailed enough to allow for abstraction to a novel scenario, or possibly participants did not have a clear understanding of how the knowledge they had gained from the current trial could assist them when approaching the novel scenarios.

Because participants in the own notes present-provided notes present condition had the opportunity to evaluate their own notes alongside the provided notes, they were expected to return significantly lower overall utility ratings of own notes, compared to participants in the own notes present-provided notes absent condition. Although this prediction was not supported by a significant result, a trend approaching significance was recorded in the expected direction. Although no firm conclusions can be drawn from this result, it does suggest a tendency for participants who had the opportunity to compare own notes and provided notes to value their own notes a little less than participants who did not have the same chance for comparison.

A main effect for component was hypothesised for measuring utility of provided notes, with participants in both the provided notes present conditions

expected to assign significantly higher utility ratings to the transcript, chronology and judicial instructions than to the offence criteria and flowcharts, because the former components of the provided notes constituted a more direct representation of the trial content. This hypothesis was partly supported. The significant main effect for component revealed no significant differences between participants' utility ratings of the transcript, chronology of events, judicial instructions, and offence criteria. However, participants overall rated the verdict flowcharts as being significantly less useful than each of the other components.

As their name suggests, although they do provide useful information about the elements of each charge, the verdict flowcharts focus more on assisting jurors in arriving at a verdict. Since arriving at a verdict constituted one single, contained task for the participants, compared to answering 30 multiple-choice questions about the facts and law of the case, it is perhaps understandable that the utility ratings assigned to the verdict flowcharts were significantly lower than those assigned to all other provided materials. It is interesting to note that this result seems to reflect a similar observation made by Ogloff (1998), who noted that jurors in his investigation of the utility of flowcharts in improving comprehension of judicial instructions tended not to use the flowchart during deliberations. Clarifying jurors' reasons for this via postdeliberation interview would be an interesting avenue of investigation which may guide researchers on possible ways of modifying flowcharts or the instructions provided regarding their use, to enhance their potential utility. Providing jurors with more explicit instructions regarding the optimal use of particular decision-aids, like flowcharts, might influence the attention given to such aids, and their perceived utility (Ogloff & Rose, 2005). Semmler & Brewer (2002) suggest that closer integration between flowcharts and the judge's verbal instructions, such that the judge highlights particular aspects of the flowchart while elaborating on the relevant

law, might provide jurors with valuable cues to improve their use of the decision-aid. These are both areas of research worth pursuing.

When the mean utility ratings for each of the provided materials (the lowest of which is 5.7) are considered in the context of the 7-point scale, these means indicate that overall, participants rated all components of the provided notes (excluding the flowcharts) as being in the very useful range. The component which received the lowest utility rating, the flowcharts, was still rated as being moderately useful overall (4.2 out of 7).

Although the comparison of own and provided notes utility ratings was not a planned one (as participants were not asked to provide a single global rating of the utility for each note type), analyses were conducted to determine whether provided notes received higher mean utility ratings than own notes. These analyses revealed that overall, where participants had access to both own and provided notes (and therefore had adequate opportunity to compare the two), the provided notes were rated as being significantly more useful than their own notes. A separate analysis also revealed that even when participants did not have the benefit of comparing the two note types, participants still rated provided notes as being significantly more useful than own notes. Of course, this latter analysis is less reliable because there is no guarantee that participants in the separate conditions were utilising comparable subjective rating scales to indicate utility. However, taken together, these results provide compelling evidence that from a subjective viewpoint, participants found the provided notes significantly more useful than their own notes.

Verdicts.

Frequencies and percentages of participants choosing guilty and not guilty verdicts were calculated for both the murder charge and the suicide charge at Time 1

and Time 2, but the frequencies of verdict changes in either direction (guilty to not guilty, and not guilty to guilty) were not large enough to justify further statistical investigation.

Addressing this particular dependent variable adequately and appropriately is quite complex. When designing this experiment, it was important from an ecological validity standpoint to require participants to arrive at a verdict (Weiten & Diamond, 1979). However, the necessarily dichotomous nature of this particular measure and the subsequent lack of variance likely to be obtained means that the utility of such a dependent variable, from a statistical viewpoint, is somewhat limited.

To improve the quality of justice, we are trying to develop more discriminating and better informed juries, but before introducing jury-aid reforms based on psychological research it is important that we establish whether the implementation of such reforms is likely to influence the overall likelihood of arriving at a guilty or not guilty verdict. The purpose of jury-aid research is certainly not to alter verdict rates, and if a particular jury-aid led to an increased risk of convicting an innocent defendant or failing to convict a guilty one, this would not be a constructive result. So, on one hand, the failure to obtain any significant results for the verdict measure provides reassurance that neither jurors' own notes nor those provided to them are differentially impacting verdict rates.

On the other hand, critics may argue that if there is no change in verdict rates as a result of these jury-aids, they are largely unnecessary. If jury-aids are having no appreciable effect on verdicts, it could be suggested that jurors' understanding is already sufficiently adequate to allow them to arrive at the "correct" verdict, and resources poured into improving this understanding are therefore unnecessary and redundant. Some would say that it does not matter if juries come to the "right" verdict for the "wrong" reasons, but others would argue that "a jury cannot be said to

have reached a correct verdict unless it understands the relevant law" (Elwork & Sales, 1985, pp.281-282). So, although commentators may focus on the outcomes of jury decision-making, effective policy evaluation and implementation also requires an understanding of the process of jury decision-making (MacCoun, 1987). As such, the focus of jury-aid development is on the process and quality of jury decision-making, aimed at improving the legitimacy of the endeavour, rather than its substantive outcome (Rosenhan et al., 1994).

The aim of jury-aids is to make the task of the juror easier, and ensure that a more complete assessment of the evidence combined with better understanding of the relevant legal requirements leads to a better informed, though not necessarily different, verdict; informed and knowledgeable jurors make better jurors than less informed ones, even if the narrow outcome is the same (Rosenhan et al., 1994). It would therefore be reasonable to expect that improved process and quality should lead to superior discrimination between guilt and innocence, thus reducing the percentage of "incorrect" verdicts, even if not altering the percentages of guilty and not guilty verdicts.

In addition, it is very difficult in the context of a criminal trial to determine the "correct" verdict. While a useful reference point for evaluating the competence of a civil trial is the jury's ability to rationally assign monetary awards (ForsterLee et al., 2005), there are no such external criteria readily available for determining this in a criminal trial. Since the verdict decision is a dichotomous one, it is also possible that a juror with a very poor understanding of the case could arrive at the "correct" verdict regardless of their lack of comprehension, so verdict alone does not constitute a useful marker of jury competence. As such, it is important that we examine both process (comprehension) and outcomes (verdicts), but considering the nature of the

current research question, place more emphasis on the former (ForsterLee & Horowitz, 2003).

1.12 Conclusion

There are a number of additional methodological issues which need to be addressed in the context of a discussion, many of which are related to the ecological validity of this experiment. However, since the remaining three studies all utilise similar methodology within the same jury simulation paradigm, the subsequent limitations and criticisms relevant to each experiment in the series, will be dealt with in the Overall Discussion.

Overall, this first experiment has demonstrated that participants acting as jurors were able to make use of a collection of court-prepared provided materials, consisting of a trial transcript, written judicial instructions, chronology of events, offence criteria, and verdict flowcharts, to answer multiple-choice questions about the facts and law of a mock criminal trial they had observed. Participants accessing these provided notes achieved significantly higher fact and law scores than participants accessing notes they had taken themselves. Participants were evidently not overwhelmed by the amount of material contained within the provided notes and in fact rated them as being more useful overall than participants' own notes. This combination of improved performance and subjective appreciation of their utility leads to the reasonable conclusion that provided notes may constitute a viable alternative to participants' own notes as a jury-aid designed to improve levels of juror comprehension. Further investigation is therefore warranted.

Experiment 2

2.1 Overview

While the outcomes of Experiment 1 present a strong indication of the potential value of provided notes as an alternative to jurors' own notes, they do not provide any further detail about the exact source of the advantage conferred by the provided notes. It would have been impractical, unrealistic, and contrary to one of the primary aims, to have examined each component of the provided notes in isolation, however the fact that the provided notes set utilised in Experiment 1 contained a trial transcript is potentially problematic. Considering this, it was important to break the provided notes down to further investigate this particular issue.

2.2 Practical Advantages of Transcript Access

From a practical point of view, a trial transcript is a relatively easy document for court personnel to prepare. Every word spoken during a trial is transcribed by the court stenographer to ensure that a verbatim account is recorded, so that an official and certified transcript of proceedings can be produced (Supreme Court of Tasmania, 2009). Such a record provides official documentation for archival purposes and forms the basis for the appeal process, but is also often used to assist the judiciary in analysing the daily progress of a case. Naturally, it also constitutes a time-efficient, cost-effective, and relatively non-labour-intensive jury-aid (Gray & Thomson, 2001). Since the trial transcript is produced regardless, and court personnel would not be required to create any additional materials, it is obviously an appealing jury-aid option, and one that has been implemented in courtrooms around Australia and New Zealand, although there is no standardised approach to its use, and opinions regarding the acceptability of the practice vary (Ogloff et al., 2006).

This is one particularly important justification for a more in-depth analysis of the relative contribution of each component of the provided notes package used in Experiment 1. If the trial transcript component alone is the main source of the advantage conferred by provided notes, it would be difficult to justify the resources required for the creation of the additional components. If these additional components are identified as being redundant, the idea of a provided notes package as an alternative to jurors' own notes automatically becomes a less viable concept.

2.3 Mixed Outcomes of Previous Research

In addition, evidence in the literature regarding the comparative utility of the trial transcript as a jury-aid is mixed. As reviewed in Experiment 1, Bourgeois et al. (1993) investigated the effects of permitting transcript access on verdicts and decision-making, concluding that transcript access prevents the evidence from becoming too technical, thus discouraging jurors from applying less effortful processing and relying on peripheral cues and heuristics to assist with their decision-making. Instead, the opportunity to repeatedly review problematic portions of the evidence afforded by allowing transcript access enhanced systematic processing. In a medical malpractice trial designed such that systematic processing should have resulted in a decision for the defendant, jurors with transcript access exposed to the high technicality version of the trial favoured the defendant, while jurors in the no access condition tended to decide for the plaintiff. Transcript access did not affect verdict results for jurors exposed to the low technicality trial. When a similar result was not reflected on a recognition test, Bourgeois et al. (1993) suggested that jurors may have used the transcript as an opportunity to check specific parts of witness testimony or judicial instructions that needed clarification, rather than reviewing the entire case, thus explaining how transcript access could influence verdicts without

increasing overall recognition scores. It was therefore concluded that transcript access increased the comprehensibility of the high technicality version of the trial, allowing jurors to engage in more systematic processing of the evidence and reach more appropriate verdicts.

However, when compared to the benefits provided by other jury-aids, the trial transcript has not fared as well. As discussed earlier, Horowitz and ForsterLee (2001) examined the potential benefits of notetaking compared to allowing transcript access. This study revealed that notetaking juries, regardless of whether they also had transcript access, were able to appropriately distinguish between the four differentially worthy plaintiffs, and made fewer errors on a recognition task. These results suggest that allowing access to a trial transcript provided very little, if any advantage in addition to that already provided by participants' own notes. Horowitz and ForsterLee explained the discrepancy between their results and those of Bourgeois et al. (1993) as a function of the differences in the mock trials used, the latter being more complex, longer and not turning on the interpretation of a single point.

2.4 Current Experiment

Accordingly, the purpose of the second experiment was to determine whether the advantage conferred by the provided notes was simply due to the presence of the transcript, or whether the additional components were also contributing, by obtaining a more detailed breakdown. The provided notes used in this second experiment remained the same as in the first, however they were combined in different groupings, allowing better assessment of the relative contributions of each component, and in particular, the trial transcript. One group of participants took their own notes, while another group had access to the trial transcript. A third group were

given all remaining components of the provided notes package without the transcript (the chronology of events, the judicial instructions, the offence criteria and the verdict flowcharts), and the final group received both the trial transcript and the remaining components (essentially the original provided notes package from Experiment 1).

2.5 Hypotheses

Objective measures.

In order to arrive at these hypotheses, the content of each component of the provided notes was considered, to evaluate its degree of utility with respect to the various question types. It seems fair to conclude that the trial transcript provides the most comprehensive amount of information regarding the facts of the case. The trial transcript was therefore expected to constitute the most helpful component of the provided notes for participants attempting to answer fact questions. Although the chronology of events replicates date-related information which is also contained within the transcript and could therefore be considered helpful with regard to the facts of the case, it seems unlikely that it would offer a measurable advantage when used in isolation from the transcript (in the other materials condition). On the other hand, the offence criteria, verdict flowcharts and judicial instructions all focus more on the relevant legal concepts, and were therefore expected to provide little assistance for answering fact questions. Although participants' own notes were expected to contain some useful information regarding the facts of the case, the results of Experiment 1 led to the belief that they are not as comprehensive as provided notes, and therefore do not offer an advantage of the same magnitude.

With these general principles in mind, a main effect for note type was hypothesised for the fact score dependent variable, such that participants in the

transcript plus other materials and transcript conditions were expected to achieve significantly higher fact scores than participants in the other materials and own notes conditions. No significant differences were expected between the transcript and transcript plus other materials groups, but the inclusion of the chronology of events in the other materials condition was expected to provide some advantage over participants' own notes, so fact scores of participants in the other materials condition were expected to be significantly higher than those of participants in the own notes condition.

As explained above, the legal focus provided by the offence criteria, verdict flowcharts, and judicial instructions (all part of the other materials condition) suggested that these materials would afford participants the greatest assistance when completing questions about the law of the case. While some legal concepts were briefly covered in the trial transcript, the information contained within the transcript was far less accessible and more difficult to locate, so it was not expected to offer the same degree of assistance. Based on the results of the first experiment, participants' own notes were expected to be of very limited use when dealing with questions of law.

Based on these general principles, a main effect for note type was anticipated for the law score dependent variable. No significant differences were expected between the law scores of participants in the transcript plus other materials and other materials conditions, but they were expected to significantly exceed those of participants in the transcript condition. In turn, participants in the transcript condition were expected to achieve significantly higher law scores than participants in the own notes condition.

The results of Experiment 1 for the scenario score measure were inconclusive, but provided no compelling reason to change the expectations with

regard to this particular dependent variable. As for Experiment 1, the general predictions and hypotheses regarding scenario score were in line with those made regarding performance on the law questions, since successful performance on the scenario questions was ultimately based upon knowledge and understanding of the law of the case.

So, as above, a main effect for note type was anticipated for the scenario score dependent variable. No significant differences were expected between the scenario scores of participants in the transcript plus other materials and other materials conditions, but they were expected to significantly exceed those of participants in the transcript condition. In turn, participants in the transcript condition were expected to achieve significantly higher scenario scores than participants in the own notes condition.

Subjective measures.

In order to perform their role of reaching a verdict successfully, jurors need to combine their knowledge of the facts of the case with their understanding of the relevant law. Participants with access to both the trial transcript and the other materials were expected to have the best balanced presentation of facts and law. Participants in the transcript condition had a great deal of information regarding the facts of the case, but very little about the law, while participants in the other materials conditions had a great deal of information about the law of the case, but little about the facts. Material contained in participants' own notes was not expected to provide the same magnitude of accurate and relevant information as that contained in any combination of the provided notes.

A main effect for note type was therefore expected for the verdict confidence and verdict difficulty dependent variables, with participants in the transcript plus

other materials condition expected to record significantly higher verdict confidence ratings and lower verdict difficulty ratings than participants in the transcript and other materials conditions. In turn, participants in these latter two conditions were expected to return significantly higher verdict confidence ratings and lower verdict difficulty ratings than those in the own notes condition.

Perceptions of law difficulty were expected to be influenced by the amount of relevant information participants were able to access. Since the focus of the majority of components of the other materials (offence criteria, judicial instructions, verdict flowcharts) is legal information, it was expected that they would provide the greatest advantage. As such, a main effect for note type was again anticipated. It was expected that participants in the other materials plus transcript and other materials conditions would return significantly lower ratings of law difficulty than participants in the transcript condition. In turn, law difficulty ratings given by those in the transcript condition were expected to be significantly lower than those in the own notes condition.

Utility measures.

As in Experiment 1, predictions regarding utility ratings of own notes were based on assumptions around the likely content of participants' own notes. Participants were expected to record notes which would be helpful for answering fact questions on the questionnaire, but their lack of familiarity with legal concepts was presumed to lead to great difficulty integrating and recording the legal information presented in the trial.

These predictions led to the hypothesis of a main effect for question type on the utility of own notes measure, with participants expected to rate their notes as being significantly more useful for answering fact questions than for answering law

and scenario questions. Although no significant differences between utility ratings of own notes for the latter two question types were previously anticipated, the results of Experiment 1 revealed such a difference, with own notes receiving significantly higher utility ratings for law questions than for scenario questions. A similar result was therefore expected for the current experiment.

The utility rating participants attributed to the trial transcript was not expected to differ based on the presence or absence of the other materials, hence no significant differences were expected in ratings of transcript utility between participants in the transcript and transcript plus other materials conditions.

With regard to the utility of the other materials, as in Experiment 1, it was anticipated that those components which constituted a more direct representation of the information presented in the trial would be more easily accessible than components which had transformed the information in some way, and would therefore receive higher utility ratings. Consequently, a main effect for component was hypothesised, such that the chronology of events, judicial instructions and offence criteria were expected to receive significantly higher utility ratings than the verdict flowcharts. The overall utility of the other materials was not expected to differ as a function of the presence or absence of the transcript, hence no significant interactions were anticipated.

2.6 Method

Participants.

A total of 92 jury-eligible participants (24 males and 68 females, with a mean age of 24.19 years) completed the experiment, with 23 participants assigned to each condition. Participants were first, second and third year psychology students studying at the Hobart and Launceston campuses of the University of Tasmania, who

completed the experiment as part of their course requirements. All participants watched the trial DVD on a large screen in a classroom.

Design.

The independent variable being measured in this experiment, note type, had four levels: own notes, transcript, other materials, and transcript plus other materials. The dependent variables to be measured were the same as those measured in Experiment 1.[5]

Materials.

The materials used in this experiment were the same as those used in Experiment 1. Participants viewed the same mock criminal trial, and completed the same questionnaire. The notetaking materials remained the same, as did the content of the provided notes. To test the relevant independent variable, however, the provided notes were given to participants in different combinations. Participants in the transcript condition received a copy of the trial transcript alone. Participants in the other materials condition received a written copy of the judicial instructions, chronology of events, offence criteria, and verdict flowcharts. Participants in the transcript plus other materials condition received both a copy of the trial transcript, as well as the other materials (listed above).

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[5] Each of the four experiments reported share a common methodological basis, with some slight variations. The methodology of Experiment 1 was described in full, but to avoid unnecessary repetition, all subsequent descriptions of methodology will focus only on highlighting the differences between experiments.

Procedure.

The initial allocation to conditions and explanations regarding the trial and the participants' task were the same as those in Experiment 1. Participants assigned to the own notes condition were instructed that they were able to take notes throughout the trial using the materials provided. Participants assigned to the transcript, other materials and transcript plus other materials conditions were all informed that they would receive some written materials at the conclusion of the trial to assist in their decision-making (See Appendix F for the complete standardised participant instructions). Participants then watched the mock criminal trial. Following this, all participants were given 5 minutes to either familiarise themselves with the relevant combination of provided materials, or review their own notes, before completing the questionnaire. Participants had access to the relevant note type while completing the questionnaire, and were urged to utilise the notes as much as possible to assist them in selecting the correct answers.

2.7 Results

From the questionnaire responses, total fact, law and scenario scores were calculated for each participant, by awarding correctly answered items one point, and incorrect responses zero points. Following the approach taken for analysing Experiment 1, the objective measures of comprehension were analysed separately from participants' subjective ratings of the task.

Objective measures of comprehension.

A MANOVA was conducted as the initial analysis, with note type as the between subjects factor. The MANOVA revealed a significant main effect for note type, Wilk's $\Lambda = .46$, $F(9, 209) = 8.71$, $p < .001$, $\eta^2_p = .23$. The subsequent univariate ANOVAs for each dependent variable will be discussed in turn.

Fact score.

The ANOVA revealed a significant main effect for note type, $F(3, 88) = 21.34$, $p < .001$, $\eta^2_p = .42$. A subsequent Ryan-Einot-Gabriel-Welsch multiple range post-hoc test (REGWQ) revealed that there were no significant differences between the mean fact scores for participants in the other materials and other materials plus transcript groups. Both of these groups achieved significantly higher mean fact scores that participants in the transcript group, who in turn achieved significantly higher fact scores than participants in the own notes group. See Table 5 for mean fact scores.

Table 5

Mean Fact Scores for Each Note Type Condition

Note Type Condition	*M*	*SD*	*n*
Own Notes	8.52	2.15	23
Transcript	10.87	3.11	23
Other Materials	12.44	1.19	23
Other Materials Plus Transcript	13.35	1.87	23

Law score.

The ANOVA revealed a significant main effect for note type, $F(3, 88) = 8.42$, $p < .001$, $\eta^2_p = .22$. A subsequent REGWQ post-hoc test revealed that there were no significant differences between the mean law scores of participants in the other materials plus transcript and other materials conditions. Participants in these groups achieved significantly higher law scores than participants in the transcript and own notes groups. The mean law scores of these latter two groups did not differ significantly. See Table 6 for mean law scores.

Table 6

Mean Law Scores for Each Note Type Condition

Note Type Condition	*M*	*SD*	*n*
Own Notes	7.57	2.54	23
Transcript	7.26	2.82	23
Other Materials	9.57	2.69	23
Other Materials Plus Transcript	10.57	2.45	23

Scenario score.

The ANOVA revealed a significant main effect for note type, $F(3, 88) = 5.91$, $p < .01$, $\eta^2_p = .17$. A subsequent REGWQ post-hoc test revealed that participants in the other materials plus transcript and other materials conditions achieved significantly higher scenario scores than participants in the transcript condition. There were no significant differences on scenario score between participants in the transcript and own notes condition, or between participants in the own notes, other materials and other materials plus transcript conditions. See Table 7 for mean scenario scores.

Table 7

Mean Scenario Scores for Each Note Type Condition

Note Type Condition	*M*	*SD*	*n*
Own Notes	7.13	1.39	23
Transcript	6.26	1.79	23
Other Materials	7.91	1.73	23
Other Materials Plus Transcript	8.00	1.45	23

Subjective ratings.

As described previously, participants' subjective ratings were analysed separately from the objective measures of participant comprehension. A MANOVA was conducted, with note type as the between subjects factor, revealing that the main effect for note type was nonsignificant, Wilk's $\Lambda = .88$, $F(9, 209) = 1.24$, $p = .27$. Subsequent univariate ANOVAs confirmed that the main effect for note type was not significant for ratings of verdict confidence, $F(3, 88) = 1.37$, $p = .26$, verdict difficulty, $F(3, 88) = 2.51$, $p = .06$, or law difficulty, $F(3, 88) = 1.17$, $p = .33$.

Utility ratings.

Own notes.

For participants in the own notes condition, a repeated measures ANOVA was conducted with question type as an independent variable with three levels (utility of own notes for fact questions, law questions, and scenario questions), to compare participants' utility ratings of their own notes. Greenhouse Geisser corrections were used where appropriate. The ANOVA revealed a significant main effect for question type, $F(1.7, 38.3) = 14.98$, $p < .001$, $\eta^2_p = .40$. Bonferroni adjusted pairwise comparisons revealed that participants rated their own notes as being significantly more useful for helping them answer fact questions, than for helping them answer law questions ($p < .01$) or scenario questions ($p < .001$). Utility ratings of own notes for answering law and scenario questions did not differ significantly ($p > .05$). See Table 8 for mean utility ratings.

Table 8

Mean Utility Ratings of Own Notes for Each Question Type

Question Type	*M*	*SD*	*n*
Fact Questions	4.26	1.91	23
Law Questions	3.04	1.75	23
Scenario Questions	2.22	1.51	23

The number of pages of notes taken by participants in the own notes condition was recorded, and the overall mean calculated; participants took a mean 3.46 pages of notes (*SD* = 1.73).

Transcript.

An independent samples *t*-test was performed to compare the utility ratings of the trial transcript for participants who had access to the transcript alone and for those who had access to both the transcript and the other materials. The *t*-test was nonsignificant, $t(44) = -0.55$, $p = .58$, equal variances assumed, indicating that participants' ratings of the utility of the trial transcript did not differ significantly, regardless of whether they also had access to other materials. Irrespective of note type condition, the overall mean utility rating assigned to the transcript was 4.96 (*SD* = 1.39).

Other materials.

A repeated measures ANOVA was conducted with note type as a between subjects factor, and component as a within subjects factor to compare utility ratings of other materials for participants who had access to the other materials alone and participants who had access to both the other materials and the transcript. The ANOVA revealed a significant main effect for component, $F(2.9, 127.4) = 18.79$, $p <$

.001, $\eta^2_p = .30$. The main effect for note type was nonsignificant, $F(1, 44) = 0.89$, $p = .35$, as was the Component x Note Type interaction, $F(2.9, 127.4) = 1.05$, $p = .37$. Bonferroni adjusted pairwise comparisons indicated that participants rated the verdict flowcharts as being significantly less useful than the chronology ($p < .001$), the offence criteria ($p < .01$) and the judicial instructions ($p < .05$). The chronology was rated as being significantly more useful than the judicial instructions ($p < .001$), but there were no significant differences between utility ratings of the chronology and the offence criteria, or between the offence criteria and the judicial instructions ($p > .05$). See Table 9 for mean utility scores.

Table 9

Mean Utility Ratings for Other Materials Components (Irrespective of Note Type Condition)

Component	*M*	*SD*	*n*
Chronology	5.76	1.13	46
Offence Criteria	4.85	1.99	46
Flowcharts	3.44	1.98	46
Instructions	4.24	1.76	46

Verdicts.

Frequencies and percentages of participants choosing guilty and not guilty verdicts were calculated for both the murder charge and the suicide charge, and are displayed in Table 10.

Table 10

Frequencies and Percentages of Murder and Suicide Verdicts for Each Note Type Condition

Charge	Verdict	Note Type Condition			
		Own Notes	Transcript	Other Materials	Other Materials plus Transcript
Murder Verdict	Guilty	2 (8.7%)	0 (0%)	2 (8.7%)	1 (4.4%)
	Not Guilty	21 (91.3%)	23 (100%)	21 (91.3%)	22 (95.6%)
Suicide Verdict	Guilty	14 (60.9%)	8 (34.8%)	10 (43.5%)	5 (21.7%)
	Not Guilty	9 (39.1%)	15 (65.2%)	13 (56.6%)	18 (78.3%)

A chi-square test was conducted for both the murder verdicts and the suicide verdicts, to determine if the frequency of guilty and not guilty verdicts differed significantly between note type groups. There were no significant differences between groups on the likelihood of guilty and not guilty verdicts for the murder charge, $\chi^2(3, N = 92) = 2.33$, $p = .51$, however a trend towards significance was noted for the suicide charge $\chi^2(3, N = 92) = 7.73$, $p = .052$. This trend suggested that participants in the own notes and other materials groups were more likely to find the defendant guilty of aiding or assisting suicide than participants in the other groups. Conversely, participants in the transcript and other materials plus transcript groups were more likely to find the defendant not guilty of aiding or assisting suicide. Thus, with regard to finding the defendant guilty of assisting suicide, where jurors had access to the trial transcript, they were more inclined to find the defendant not guilty.

2.8 Discussion

Objective measures.

Fact score.

The trial transcript was expected to constitute the most helpful component of the provided notes for answering fact questions, and a main effect for note type was anticipated: participants in the transcript plus other materials and transcript conditions were expected to achieve significantly higher fact scores than participants in the other materials and own notes conditions, and fact scores of participants in the other materials condition were expected to be significantly higher than those of participants in the own notes condition. This hypothesis was partly supported.

As anticipated, participants with access to any format of provided notes achieved significantly higher fact scores than participants who took their own notes. Contrary to expectations, participants with access to the combination of the trial transcript and the other materials achieved significantly higher fact scores than participants with access to the trial transcript alone. Considering that the other materials do not provide any additional fact-related material that is not already contained in the transcript, this result suggests that the condensed format of the other materials (the chronology in particular) makes the trial transcript more accessible and perhaps easier to navigate. It is also interesting to note that even participants in the other materials condition achieved significantly higher mean fact scores than participants in the transcript condition. Since the other materials were identified as focusing more on concepts of law than information about facts of the case, this result seems surprising. However, when we consider that the other materials do include the chronology of events, and many of the fact questions participants were required to answer involved details about dates and times, this result is easier to understand.

Law score.

The legal focus provided by components of the other materials conditions was expected to confer the greatest benefit for participants completing questions about the law of the case. A main effect for note type was therefore anticipated. Law scores of participants in the transcript plus other materials and other materials conditions were not expected to be significantly different from each other, but were expected to significantly exceed those of participants in the transcript condition, who were in turn expected to achieve significantly higher law scores than participants in the own notes condition.

Again, this hypothesis was partly supported. There were no significant differences between the mean law scores of participants in the other materials plus transcript and other materials conditions, who achieved significantly higher law scores than participants in the transcript and own notes groups. The mean law scores of these latter two groups did not differ significantly. It would seem that any legal information contained within the transcript was too difficult to locate or access for it to provide any real advantage over participants' own notes, however as expected, the legal focus provided by the other materials proved advantageous for participants answering law questions.

Scenario score.

Since successful performance on the scenario questions is ultimately based upon knowledge and understanding of the law of the case, the hypothesis was the same as that listed for law score (see above). The results for this measure again partially supported the hypothesis; participants in the other materials plus transcript and other materials conditions achieved significantly higher scenario scores than participants in the transcript condition. There were no significant differences

between scenario scores of participants in the transcript and own notes condition, or between participants in the own notes, other materials and other materials plus transcript conditions. Where the subsets are not clearly defined as in this case, the results are particularly difficult to interpret. This perhaps adds further weight to the suggestion that the scenario score dependent variable was not successfully measuring what it was intended to.[6]

Since the design and purpose of the current experiment was quite different to the pre-existing literature addressing the utility of trial transcripts, direct comparison between the results is difficult. However, the current results provide an interesting contrast to those of Horowitz and ForsterLee (2001), who concluded that notetaking was significantly more effective than transcript access in increasing jury competence. In the current study, on the fact score dependent variable, participants with transcript access achieved significantly higher scores than participants who took their own notes, and on the law score dependent variable, scores of participants in the own notes and transcript conditions were not significantly different. Horowitz and ForsterLee's conclusion is based on results of a group compensation award task rather than an individual multiple-choice question task, and transcript access for Horowitz and ForsterLee's juries was via computer rather than hard copy, which may have been less facilitative. Perhaps the discrepancy between the results of the two studies can be attributed to these differences.

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[6] Although this dependent variable returned some significant results in Experiment 1 and the current study, these results have so far failed to lend themselves to a consistent or logical explanation. Since they were adding very little value to the project as a whole, the decision was made to exclude this particular dependent variable from the write-up of Experiments 3 and 4. Participants in these experiments still completed the scenario score measure, and the results were included in the analysis, but they will not be reported. The results can still be accessed in the relevant appendices.

Bourgeois et al.'s (1993) study demonstrated the utility of transcript access in encouraging elaborative processing, but did not compare the efficacy of transcript access to any other jury-aids, hence it is difficult to draw a direct parallel.

Subjective measures.

In order to perform their role of reaching a verdict successfully, jurors need to combine their knowledge of the facts of the case with their understanding of the relevant law. A main effect for note type was expected for measures of verdict confidence and verdict difficulty, with participants in the transcript plus other materials condition predicted to record significantly higher verdict confidence ratings and lower verdict difficulty ratings than participants in the transcript and other materials conditions. In turn, participants in these latter two conditions were expected to return significantly higher verdict confidence ratings and lower verdict difficulty ratings than those in the own notes condition. The absence of significant results for these measures meant that these hypotheses were not supported.

Perceptions of law difficulty were expected to be influenced by the amount of relevant information participants were able to access. Since the focus of the majority of components of the other materials (offence criteria, judicial instructions, verdict flowcharts) was on legal information, it was expected that they would provide the greatest advantage. A main effect for note type was again anticipated, but the predicted significant differences were not borne out in the results.

Once again, the differences observed between participant groups on the objective measures of performance were not reflected in their subjective ratings. The consistent failure to observe any significant results with respect to these subjective measures, combined with the unexpected results revealed in Experiment 1, suggests that the subjective nature of these dependent variables may have been problematic,

lacking sufficient power to detect the kinds of differences that were expected. As highlighted in Experiment 1, some previous studies have successfully utilised subjective measures which focus on participants' evaluation of the trial experience itself (e.g., ForsterLee et al., 2005; Heuer & Penrod, 1988); perhaps these more general indications of participants' subjective experience would have been more valuable.

Utility measures.

As in Experiment 1, predictions regarding utility ratings of own notes were based on assumptions around the likely content of participants' own notes. Participants were expected to record notes which would be helpful for answering the fact questions on the questionnaire, however their presumed lack of familiarity with legal concepts was predicted to lead to great difficulty integrating and recording the legal information presented in the trial.

These predictions led to the hypothesis of a main effect for question type, and as anticipated, participants rated their own notes as being significantly more useful for helping them answer fact questions, than for helping them answer law questions or scenario questions. However, contrary to expectations (and to the results of Experiment 1), utility ratings of own notes for answering law and scenario questions did not differ significantly. The magnitude of the difference between the latter two mean ratings was actually larger in the current experiment than in Experiment 1, but participant numbers per group in Experiment 1 were much larger than in the current experiment (60 participants per group as opposed to 23). This suggests that the difference in the significance level of this result is more a function of the statistical power available in the analysis rather than different participant responses between the two experiments.

As noted in Experiment 1, the mean utility rating participants assigned their own notes for assisting with the fact questions (the area own notes were deemed as being most useful for) was 4.26 (*SD* = 1.91). Considered in the context of the 7-point utility rating scale, this demonstrates that participants still only rated their own notes overall as being moderately useful.

The utility participants attributed to the trial transcript was not expected to differ based on the presence or absence of the other materials, hence no significant differences were expected in ratings of transcript utility between participants in the transcript and transcript plus other materials conditions, and none were observed. The overall mean utility rating assigned to the transcript was 4.96 (*SD* = 1.39), suggesting that participants rated it as being moderately useful.

With regard to the utility of the other materials, as in Experiment 1, it was anticipated that those components which constituted a more direct representation of the information presented in the trial would be more easily accessible than components which had transformed the information in some way, and would therefore receive higher utility ratings. Consequently, based on this idea and the results obtained in Experiment 1, a main effect for component was hypothesised, such that the chronology of events, judicial instructions and offence criteria were expected to receive significantly higher utility ratings than the verdict flowcharts.

As expected, participants rated the verdict flowcharts as being significantly less useful than each of the three remaining components. The chronology was rated as being significantly more useful than the judicial instructions, but there were no significant differences between utility ratings of the chronology and the offence criteria, or between the offence criteria and the judicial instructions. The unexpected significant difference observed between the chronology and the judicial instructions may be due to a combination of factors, including the relative layout of the two

resources (the chronology is a simple table containing only a small amount of text, whereas the judicial instructions consist of block paragraphs), and the afore-mentioned emphasis on dates and times in the fact questions participants were required to answer. It should be noted, however, that such a difference was not observed in Experiment 1. The overall utility of the other materials was not expected to differ as a function of the presence or absence of the transcript, hence no significant interactions were anticipated, and none were observed.

The overall mean utility ratings of the chronology of events, the offence criteria and the judicial instructions (Refer Table 9 for means) are indicative of ratings between moderately and very useful on the 7-point scale, and even the component receiving the lowest mean utility rating, the verdict flowcharts, still received ratings around the moderately useful region.

Verdicts.

No predictions were made regarding this particular dependent variable, which functions more as a way of maintaining the realism of the participants' task rather than an informative indicator of participant comprehension. Once again, there were no significant differences between groups on the likelihood of guilty and not guilty verdicts for the murder charge, and although a trend for increased likelihood of arriving at a not guilty verdict for participants with transcript access was noted for the suicide charge, this trend did not reach significance and therefore will not be addressed in any detail.

2.9 Conclusion

In summary, this second experiment of the current series confirms the viability of a provided notes package as an alternative jury-aid to juror notetaking, by demonstrating the importance of the court-prepared materials which constitute an

addition to the trial transcript.[7] Trial transcripts are readily prepared, and time- and cost-efficient, thus constituting an obvious and relatively easily implemented jury-aid. The inclusion of supplementary court-prepared materials can only be justified if substantial additional increases in juror comprehension can be demonstrated, and this study has done just that. For measures of both fact and law comprehension, participants with access to the trial transcript plus the additional court-prepared materials achieved significantly higher scores than participants with access to the trial transcript alone, presumably due to the more balanced presentation of facts and law and the varied presentation formats offered by the combination of the transcript and the other materials. These significant advantages recorded for participants in the transcript plus other materials condition over those in the transcript condition clearly justify the inclusion of the additional materials. Satisfied that provided notes constitute a viable alternative to jurors' own notes, the next step involved obtaining more information about the operation of these provided notes and the comprehension advantages they provide under varying circumstances.

Experiment 3

3.1 Overview

With the feasibility of provided notes as a potentially useful aid for improving juror comprehension established by Experiments 1 and 2, Experiment 3 was designed to obtain more information about the function of provided notes by investigating additional factors which may influence the benefits they confer. Mock-jury studies are often criticised for their lack of verisimilitude, and such criticisms often focus on the failure of some studies to incorporate deliberation (Weiten &

[7] As for Experiment 1, additional methodological issues will be addressed within the overall discussion.

Diamond, 1979). The preceding experiments in this series employed individual mock-jurors only, to investigate the effects of different styles of written materials. In reality, however, deliberation is an essential part of the trial process, and the influence group discussion can have on juror verdicts and attitudes has been clearly demonstrated (e.g., Izzett & Leginski, 1974; Kerwin & Shaffer, 1994; McGuire & Bermant, 1977). It certainly follows that if deliberation can have such an important effect on juror verdicts and attitudes, the possible effects on juror comprehension certainly warrant examination. "Whatever competence the jury has is a function of two of its attributes: its number and its interaction" (Ellsworth, 1989), thus the way in which jurors combine their individual knowledge and understanding of a trial is of crucial concern (ForsterLee et al., 2000), and a study where participants deliberate is needed (Lieberman & Sales, 1997).

3.2 Group Versus Individual Performance

Intuition might lead to the conclusion that working with others should inspire individuals to maximise their potential and work especially hard (Karau & Williams, 1993). It is often assumed that in most contexts, groups will outperform individuals when making decisions, because groups have more available sources of information, memory and skills to draw upon (Bourgeois et al., 1995; Lempert, 1981). It has been demonstrated that groups recall a greater quantity of details (Kaplan & Miller, 1983), and demonstrate better evidence recall (Saks, 1977) than individuals, possibly because they have an interactive memory system which permits more effective processing of information (Bourgeois, et al., 1995). It therefore follows that the competency of juries should be superior to that of individual jurors (McCoy, Nunez & Dammeyer, 1999), but the research on whether this is actually the case has produced mixed outcomes.

Deliberation and group performance.

The process of deliberation is designed to facilitate the combination of the knowledge, perspectives and memories of the individual jurors so they may achieve a shared understanding of the case. The presumption that "this understanding is more complete and more accurate than any of the separate versions that contributed to it," (Ellsworth, 1989, p. 206), is presented as one of the main benefits of the deliberation process (Ellsworth, 1989). There is a small body of research testing the effects of group discussion on juror competence, and the outcomes are mixed.

Tetlock (1983) found that deliberation increased juror accountability, requiring jurors to justify their position to other jurors with unknown views, thus preventing them from becoming "cognitively lazy." He demonstrated that deliberation encourages increases in the integrative complexity and evaluative inconsistency of reported thoughts about the issue, and greater awareness of potential counterarguments and objections. Hastie, Penrod and Pennington (1983) found that the postdeliberation memory of individual jurors was approximately 60% for items of evidence, and less than 30% for aspects of the judicial instructions. They then assessed group memory by assuming that if a single member remembered an item then the jury remembered it. Jury memory was then over 90% for evidence, and over 80% for judicial instructions. While this suggests that group performance significantly exceeds individual performance, Hastie et al. did not assess this comparison directly, and the assumption on which their assessment of group memory was based may be flawed.

McCoy et al. (1999) tested the effect of deliberation on reasoning competence by showing 104 participants a videotaped murder trial. Jurors answered questions about their reasoning processes, either immediately following the videotape, following a period of deliberation in a 12-member group, or following a period of

individual rumination. Postdeliberation jurors demonstrated more sophisticated reasoning styles than predeliberation and individual-rumination jurors and results revealed that individually-ruminating jurors made several blatantly incorrect statements about the case and verdict categories. When such statements arose in the course of deliberations, they were generally challenged, and a rereading of the instructions was requested, whereas individual jurors did not request such clarification. Evaluating juror reasoning in the context of Kuhn's (1991) reasoning continuum, McCoy et al. concluded that the sophisticated reasoning processes demonstrated by deliberating jurors fell closer to the high-performance, theory-evidence coordination end of the continuum. It must be acknowledged that reasoning style is not a direct measure of comprehension, but a relationship between high performance reasoning and greater overall competence can reasonably be hypothesised.

Severance et al. (1984) also found deliberation to have a positive effect on juror comprehension of judicial instructions. Jurors who received revised copies of judicial instructions and were given a chance to deliberate performed better on comprehension measures than jurors who received revised instructions but did not deliberate. Further, where jurors received revised instructions only, ex-jurors (with some jury experience) performed better than current jurors (with no jury experience), but this gap only held for jurors who did not deliberate; where jurors had been given a chance to deliberate, there was no difference between ex-jurors' and current jurors' ability to apply the law correctly.

Elwork et al. (1982) tested the effects of deliberation on juror comprehension of a set of original judicial instructions, and a revised set of these same instructions, with somewhat different conclusions. Nondeliberating jurors presented with the original instructions answered an average of 23% of comprehension questions

correctly, compared to an average 40% correct for deliberating jurors who received the same instructions. Thus, for the original instructions, deliberation did lead to an increase in comprehension, though comprehension levels still remained well below an acceptable standard. On the other hand, jurors given the revised instructions did not differ on levels of comprehension, regardless of whether they were given the opportunity to deliberate. Such results suggest that deliberative processes may improve comprehension of poorly drafted instructions only, but still do not lead to adequate levels of understanding, with jurors correctly answering less than half of the questions presented to them.

Ellsworth (1989) found that the process of deliberation did not offer any measurable advantage in aiding juror comprehension of legal concepts, though it did improve jurors' understanding and recall of factual issues. A videotape of a homicide trial was shown to 216 participants (resulting in 18 twelve-person mock-juries), who then completed a questionnaire which tested understanding of the facts of the case, and the relevant law, either immediately following the videotape, or immediately following an hour of deliberation. On the multiple-choice test of factual issues, deliberating jurors outperformed nondeliberating jurors, however there was no difference in understanding of the judge's instructions between the groups. This suggests that while deliberation may work well at increasing jurors' understanding and recall of the facts of the case, it does little to aid their understanding of the law; jurors failed to absorb a great many of the judge's instructions, and the process of deliberation did not correct this problem. Ellsworth, however, cautions that due to the small sample size of her study, the results should be treated as part of an intensive case study of the process of jury deliberation.

Rose and Ogloff (2001) also tested the assumption that groups of people perform better in recall and decision-making tasks than individuals, finding that

group deliberation did not have an impact on application test performance for juries and individual jurors attempting to understand instructions regarding the coconspirator exception to the hearsay rule of evidence, contradicting both the law's view of group superiority and some of the existing research. They later concluded that the overwhelming weight of the experimental evidence is that deliberation is not sufficient to overcome the incomprehensibility of judicial instructions, and jury comprehension of the law is unlikely to be much better than that of individual jurors (Ogloff & Rose, 2005).

So, while some studies persuasively present the argument that deliberations enhance jury competence, others suggest that deliberation has little impact on informed decision-making. These studies have also highlighted some of the complexities relating to this debate, identifying particular factors which differentially affect the utility of the deliberation process. Diamond and Levi (1996) offer a possible explanation for the mixed findings on the assistance offered by deliberation on juror comprehension. They suggest that the amount of assistance provided by deliberation is dependent upon the number of jurors who have a good understanding of the relevant issues prior to starting deliberation. Thus, only when a substantial majority of jurors have correctly grasped the issues at hand will deliberation have a positive effect on overall comprehension. They reached this conclusion as a result of their study, which highlighted the inconsistent impact of deliberation on comprehension. An audio-taped trial re-enactment, followed by either pattern or revised judicial instructions, was heard by 149 mock-jurors who completed questionnaires testing their understanding of the relevant law. The researchers focused on three issues which were regarded as being typically confusing to jurors; on two of these issues, revised instructions increased comprehension levels substantially, but the opportunity to deliberate did not. On the third issue however,

deliberating jurors averaged 79% correct compared to nondeliberating jurors' 67%. Jurors who received the revised instructions, and were given the opportunity to deliberate showed the highest comprehension levels of 88%. Diamond and Levi concluded that courts cannot rely on the corrective power of deliberations where a misunderstanding is shared by a substantial proportion of the jurors.

Deliberation and jury-aids.

The empirical research into the effects of group discussion on benefits provided by jury-aids is less extensive. Instead, jury-aid researchers have tended to make group-superiority assumptions, based on the intuitive idea that working with others to understand a difficult task should maximise group achievement potential (Karau & Williams, 1993). ForsterLee et al. (2000), for example, in their experiment investigating the effects of bottom line summaries, used individual, nondeliberating jurors. They suggest, however, that they would expect these written summaries to have a more pronounced effect following group deliberation, thus assuming that group performance will be superior.

ForsterLee and Horowitz (1997) examined the effects of preinstruction and note-taking on juror competence in a civil trial, using individual, nondeliberating mock-jurors. Their main findings suggested that preinstructed jurors performed more effectively than postinstructed jurors, with notetaking seeming to enhance the effects of preinstruction. The next step for their research, they suggest, is to assess the effect of such aids on deliberating groups; although they leave the question open to empirical assessment, they presume that enhancing the cognitive performance of individual group members should also enhance the performance of the group.

Horowitz and ForsterLee (2001) made a similar assumption. Their study involved deliberating juries, who were either allowed to take notes or not, and either

given access to the trial transcript or not. Notetaking juries performed more effectively than non-notetaking juries, regardless of whether or not they also had transcript access. The deliberation dynamics were not directly analysed, but Horowitz and ForsterLee suggested that the effects of notetaking were enhanced by the deliberations. Bourgeois et al. (1993) even suggested that the resources of a jury may obviate the need for transcripts, though this statement referred more to the increased capacity of a jury to resist counterfactual and other heuristic reasoning, rather than their information recall and comprehension capabilities.

These extrapolations of individual results and assumptions of group superiority over individuals, however, do not take into account the potential drawbacks of group-work on productivity. The only published research which has explored the effect of deliberation on a proposed jury-aid empirically is that of Bourgeois et al. (1995), who observed these potential drawbacks of group-work in a study which addressed the effect of preinstruction and deliberation on evidence recall. Jurors either worked in nominal groups which did not deliberate, or interactive groups which did. Preinstructed nominal jurors were able to distinguish among differentially worthy plaintiffs when awarding damages, whereas interactive jurors did not distinguish between these plaintiffs. Furthermore, there was no indication that evidence recall improved following group discussion, except in preinstructed groups. Apparently, then, these assumptions that the benefits provided by jury-aids will be enhanced by group discussion are not always borne out. Bourgeois et al. describe their results as being consistent with a social loafing explanation.

3.3 Factors Affecting Group Productivity

The phenomenon of social loafing casts doubt over assumptions of group superiority, providing one possible explanation for the failure to find improved performance following deliberation. Social loafing describes a loss of motivation and effort in group tasks; individuals tend to exert less effort on a task where their input will be pooled with others, than if their individual input was to remain separate (Latané, Williams, & Harkins, 1979). The jury's task is a collective one, where individual inputs are not identifiable from an outcome perspective (Jackson & Harkins, 1985), thus the possibility remains that deliberating juries may be affected by social loafing.

Latané et al. (1979) originally demonstrated that individuals asked to cheer or clap as loudly as possible worked harder at producing noise when they were asked to perform alone, than when they performed in groups. Similar results have been demonstrated across a variety of tasks and group-work settings, firmly establishing the existence of the social loafing phenomenon. Further research has extended the area, exploring factors which moderate and exacerbate the effect, and possible causes and explanations (Jackson & Williams, 1985; Karau & Hart, 1998; Smith, Kerr, Markus, & Stasson, 2001). One study, conducted by Weldon and Bellinger (1997), suggests that social loafing has particularly pertinent applications to the role of juries. This study presented participants with either a picture or a short story, and required them to record as many details as they could remember either individually (as part of a nominal group), or collectively as part of an interacting group. The nominal group score was determined by adding all unique details listed between the individuals, while one member of the collaborative groups recorded everything the group members mentioned. Scores indicated that nominal groups recalled more information than collaborative groups.

The role of social loafing in more specific jury-related contexts, however, is a less researched area. Considering that the current jury system is partly based on the assumption that a group of jurors will produce a better thought-out and more balanced decision than individual jurors, this is a surprising oversight (Henningsen, Cruz, & Miller, 2000). The research which has focused on group productivity in jury decision-making has demonstrated that the operation of social loafing is a potential concern. Henningsen et al. (2000) explored the influence of social loafing related motivation losses on jurors' predecision information processing, by focusing on the encoding of information in anticipation of a jury-type discussion. Information about a civil trial was given to 189 participants, who were informed that they would be required to make a decision about the case, either as an individual, in a group of four people, or in a group of eight people. Participants were also led to believe that the decision was either intellective (i.e., a decision for which a correct answer exists) or judgmental (i.e., a problem that has no objectively correct answer). Before the anticipated discussion occurred, all participants completed an information recall measure, which revealed a classic social loafing effect; jurors who anticipated making the decision in a group of four or eight people recalled significantly less information than jurors who thought they would have to make the decision alone. Of particular interest was the finding that when jurors believed their decision was a judgmental one, they recalled less information than jurors who believed the task to be intellective. So, although the process of deliberation was not investigated directly, this study demonstrated that the simple anticipation of working in a group was sufficient to induce motivation losses typically associated with social loafing in participants acting as mock jurors.

3.4 Current Study

Thus, while some researchers suggest that the benefits of jury-aids which provide assistance to individual jurors will be even more pronounced following deliberation, this may not necessarily be the case. It is possible that due to the action of group processes such as social loafing, group performance with the help of such jury-aids may not be superior to individual performance using the same aids, and may even be poorer than individual performance. The aim of Experiment 3 was to investigate this issue, utilising a between-subjects factorial design in which three independent variables were manipulated; deliberation expectation, deliberation and note type. The possible action of predeliberation social loafing was investigated by manipulating participants' expectations of whether they would be required to deliberate, and the comprehension-enhancing quality of provided notes and jurors' own notes was assessed by comparing the benefits afforded by each jury-aid for deliberating, nondeliberating and individually-ruminating jurors. Juror comprehension was assessed in the same manner as the previous studies.

3.5 Hypotheses

Although many experiments have assumed that the benefits of jury-aids will be magnified by the deliberation process due to the information sharing and pooled resources available in the group setting, these assumptions of group superiority do not share the same empirical basis as the action of social loafing, which has been demonstrated for participants anticipating deliberation (Henningsen et al., 2000). As such, for the purposes of the current experiment, it was generally presumed that jurors who expected to work in a group and pool their cognitive resources with other jurors during the deliberation process, would be susceptible to the workings of social

loafing, and thus less motivated to attend to the trial than jurors who believed they would be working alone.

Anticipation of deliberation aside, since the evidence regarding the utility of the deliberation process itself in improving juror comprehension is mixed, its utility in this study was presumed to depend upon the proportion of jurors who had a sufficient understanding of the relevant issues prior to deliberating (Diamond & Levi, 1996). Where a majority of jurors had a reasonable grasp of important facts and legal concepts, it was expected that the process of deliberation would be more useful in aiding jurors' comprehension than when jurors' understanding of the relevant information was limited (jurors' pre-deliberation understanding was estimated based on group-work anticipation and note type, not measured directly). With this qualification in mind, the results of McCoy et al.'s (1999) study led to the expectation that deliberating jurors would demonstrate better rates of comprehension than individually-ruminating and nondeliberating jurors.

The utility of the two jury-aids being compared in this experiment was expected to differ according to both deliberation expectation, and presence or absence of deliberation. As previously established, notetaking is a cognitively demanding process, and compilation of a useful set of notes requires sufficient attention to the task (Aiken et al., 1975). It was therefore anticipated that such a process would be more sensitive to the potential motivation losses possibly occurring as a result of the deliberation expectation manipulation; jurors in the own notes conditions were expected to take fewer, and less comprehensive notes when anticipating group deliberation. On the other hand, since provided notes constitute a more passive aid, such that their quality does not depend on jurors' ability to attend appropriately to the trial, it was anticipated that the benefits provided by this note type would be much less susceptible to motivation losses potentially experienced by

participants. It was also expected that the provided notes would constitute a solid foundation of knowledge for jurors approaching the task of deliberation, and increase the likelihood that they would be able to capitalise on the additional assistance that process may provide.

Objective measures.

The results of Experiments 1 and 2 revealed that participants were able to record some useful information in their notes regarding the facts of the case. Even though participants accessing their own notes did not perform as well as participants accessing the provided notes, they did perform better on the fact comprehension measure than participants who had access to no notes at all. This information, combined with the general principles discussed above led to the expectation of a deliberation expectation by deliberation by note type interaction for the fact score dependent variable.

It was anticipated that where participants took their own notes, those who did not expect to deliberate would achieve significantly higher overall fact scores than participants who expected to deliberate, due to the effect of social loafing related motivation losses on the quality of their notes. Where participants expected to deliberate, no significant differences were anticipated between deliberating, nondeliberating and ruminating participants, because loafing participants were not expected to enter the deliberation process with a sufficient understanding of the relevant information. However, where participants did not expect to deliberate and therefore presumably had a better developed initial understanding of the facts, deliberating participants were expected to be able to capitalise on the information-sharing aspect of the deliberation process, and achieve significantly higher fact scores than nondeliberating and ruminating participants.

For participants in the provided notes conditions, the effect of the deliberation expectation manipulation was not expected to be noticeable, due to the provided notes' presumed relative lack of vulnerability to social loafing processes. So, regardless of deliberation expectation, these deliberating participants were expected to achieve significantly higher fact scores than nondeliberating and ruminating participants, because the provided notes allowed participants to approach the deliberation process with a sound knowledge base and thus capitalise on the pooled cognitive resources available throughout deliberation. Overall, participants in the provided notes conditions were expected to achieve significantly higher fact scores than participants in the own notes conditions.

Whereas participants' own notes provided some degree of assistance for questions of fact in Experiments 1 and 2, minimal though that assistance may have been, the findings of these foregoing experiments suggested that participants' own notes did not provide any degree of assistance for issues of law. As such, the predictions for the law score measure in the current experiment differ from those made for fact score.

The results of Experiments 1 and 2, again combined with the general predictions considered above, led to the expectation of a deliberation by note type interaction. As above, participants in the provided notes conditions were expected to achieve significantly higher law scores than participants in the own notes conditions. Since participants in the own notes conditions were not expected to gain an adequate understanding of the legal concepts prior to deliberation, deliberation was not expected to provide any measurable advantages, so no significant differences were anticipated between the law scores of deliberating, nondeliberating and ruminating participants. On the other hand, access to the provided notes was expected to allow participants to develop a basic understanding of the relevant legal information, thus

deliberation was expected to be a helpful process leading to significantly higher law scores than those achieved by nondeliberating and ruminating participants.

As above, the efficacy of provided notes was not expected to be affected by any motivational losses due to social loafing processes. Participants were not expected to take useful notes about legal concepts, so again, the efficacy of own notes for addressing issues of law was not expected to be influenced by the deliberation expectation manipulation, hence only a two-way interaction is hypothesised for this dependent variable.

Subjective measures.

The influence of the independent variables was expected to have a similar overall impact on the dependent variables measuring subjective experience. Participants' verdict confidence ratings were intended to be determined by their perception of how certain they were that the verdict they had arrived at was the correct one. The anticipated reduction in participant attention and motivation occurring as a result of an expectation to deliberate was hypothesised to adversely affect verdict confidence, and the act of deliberating was not expected to relieve this. However where participants had not expected to deliberate, it was thought that any subsequent verdict discussion occurring in the context of deliberation would improve confidence. These effects were anticipated to be more noticeable for participants in the own notes conditions, for the same reasons as described above. Participants in the provided notes conditions were again expected to be less susceptible to fluctuations in verdict confidence as a result of these factors, due to the solid foundation of knowledge imparted by the provided notes and the systematic processing they encouraged (Petty & Cacioppo, 1986).

So, a deliberation expectation by deliberation by note type interaction was anticipated. For notetaking participants who did not expect to deliberate, deliberating participants were expected to return significantly higher verdict confidence ratings than nondeliberating and ruminating participants. Where participants took their own notes and expected to deliberate, no significant differences in verdict confidence ratings were expected between deliberating, ruminating or nondeliberating participants. On the other hand, regardless of deliberation expectation, deliberating participants with access to provided notes were expected to return significantly higher verdict confidence ratings than nondeliberating and ruminating participants.

Once again, the verdict difficulty measure is closely, though inversely, related to the verdict confidence variable, so the following predictions follow a similar, though reversed, pattern to those above. A deliberation expectation by deliberation by note type interaction was anticipated. For notetaking participants who did not expect to deliberate, deliberating participants were expected to return significantly lower verdict difficulty ratings than nondeliberating and ruminating participants. Where participants took their own notes and expected to deliberate, no significant differences in verdict difficulty ratings were expected between deliberating, ruminating or nondeliberating participants. On the other hand, regardless of deliberation expectation, deliberating participants with access to provided notes were expected to return significantly lower verdict difficulty ratings than nondeliberating and ruminating participants.

Participants' law difficulty ratings were intended to be determined by their perception of how challenging it was to understand the legal concepts presented to them throughout the mock trial. The utility of own notes for addressing issues of law was not expected to be influenced by the deliberation expectation manipulation, and

since these participants were not expected to gain an adequate understanding of the legal concepts prior to deliberation, deliberation was not expected to provide any measurable advantages. So, no significant differences were anticipated between the law difficulty scores of deliberating, nondeliberating and ruminating participants. On the other hand, provided notes were still expected to prove useful for participants, regardless of deliberation expectation, and the process of deliberation was expected to enhance this utility.

Hence, a deliberation by note type interaction was hypothesised. No significant differences were anticipated between the law difficulty ratings of deliberating, nondeliberating and ruminating participants who took their own notes. For participants with access to the provided notes, significantly lower law difficulty ratings were expected from deliberating participants, than from nondeliberating and ruminating participants.

Utility measures.

The loss of motivation predicted to influence participants who expected to deliberate was anticipated to have an important impact on the quality of their own notes, but the process of deliberation itself was not expected to influence participants' judgements of the utility of their own notes. As such, a main effect for deliberation expectation was anticipated for the measure of utility of own notes, with participants who did not expect to deliberate predicted to return significantly higher utility ratings than participants who expected to deliberate.

Since it is a key premise of this experiment that provided notes will not be adversely affected by the impact of deliberation expectation or the deliberation process, no significant differences in the utility ratings of provided notes were predicted between conditions. However, as in previous experiments in this series,

some components of the provided notes were expected to receive significantly higher utility ratings than others, thus a main effect for component was anticipated. More specifically, in line with the previous studies, it was predicted that verdict flowcharts would receive significantly lower utility ratings than any of the other provided notes components (transcript, chronology of events, judicial instructions and offence criteria). No other significant differences between the individual components were anticipated.

In this experiment, participants who did eventually go on to deliberate were required to rate the utility of this process, to provide some indication of subjective experience of deliberation. A deliberation expectation by note type interaction was anticipated for this dependent variable. For participants who took their own notes, those who did not expect to deliberate were anticipated to return significantly higher ratings of deliberation utility than participants who did expect to deliberate. No differences in utility ratings were expected for participants in the provided notes condition, regardless of deliberation expectation. Overall, participants with access to provided notes were expected to return generally higher ratings of utility than those who took their own notes, as the knowledge base afforded by the provided notes was expected to allow them to capitalise on the process most effectively.

The subjective opinions about the deliberation process expressed by those participants who were not given the opportunity to take part in it were also of interest. As such, participants in the nondeliberation and individual rumination conditions were required to rate how useful they expected they would have found the deliberation process, had they had the chance to utilise it. A deliberation expectation by note type interaction was anticipated. Overall, participants in the own notes conditions were expected to return significantly higher ratings of anticipated utility than those with access to provided notes, because of their increased need to

supplement the information contained within their own notes. In addition, for participants in the own notes conditions, it was anticipated that those who expected to deliberate (but were then unable to do so), would return significantly higher utility ratings than those who had not expected to have the opportunity in the first place. Expectation was not anticipated to affect utility ratings of participants in the provided notes conditions, because there would have been less need to supplement the provided materials with information that may be learned in deliberation.

3.6 Method

Participants.

A total of 242 jury-eligible participants (52 males and 190 females, with a mean age of 23.7 years) completed the experiment. Participants were first, second and third year psychology students studying at the Hobart and Launceston campuses of the University of Tasmania, who completed the experiment as part of their course requirements. All participants watched the trial DVD on a large screen in a classroom.

Design.

This experiment employed a 2[deliberation expectation: expect or don't expect] x 3[deliberation: deliberate, don't deliberate, or ruminate] x 2[note type: own or provided] factorial design. The same dependent variables as those assessed in Experiment 1 were measured, with the exception of a single extra item: deliberating participants rated the utility of the deliberation process on a 7-point scale (1 = *not very useful*, 7 = *very useful*), while nondeliberating participants rated how useful they thought they would have found deliberation had they had such an opportunity, using the same scale. As a result of one other small change to the questionnaire,

participants who took their own notes were no longer required to rate their utility for each of the different question types, but instead simply provided a single global utility rating.

Materials.

The materials used in this experiment were the same as those used in Experiment 1. Participants viewed the same mock criminal trial, and completed the same questionnaire (with a single additional item inserted in Part C, as described above. See Appendix G for a copy of Part C of the Experiment 3 questionnaire). The notetaking materials remained the same, as did the content of the provided notes. The only additional materials developed were the deliberation instructions and the rumination worksheet.

Deliberation instructions.

To ensure that deliberating participants were able to sustain discussion about the trial for the allotted time, an additional set of instructions was developed. These instructions divided the deliberation process into a number of tasks, and provided participants with a variety of deliberation-related activities which they could engage in should they find that they reached a unanimous verdict before the allotted deliberation time had lapsed. For example, participants were encouraged to discuss both the legal and factual details of the case, to listen to each participant's verdict and their reasoning, and attempt to resolve any misunderstandings shared by other participants. The instructions were developed based on the Black Direction (*Black v The Queen*, 1993), a set of judicial instructions designed to be given by a judge to the jury when the jurors are unable to reach a unanimous verdict, to encourage expansion of the deliberation process. The adaptation of the Black Direction into a set of basic instructions about deliberation-related tasks for the purpose of this experiment was

done in consultation with the same previously mentioned legal academics to avoid distortions in meaning. (See Appendix H for a copy of the deliberation instructions).

Rumination worksheet.

For participants in the deliberating conditions, the task of deliberating constituted a 30 minute gap between the conclusion of the trial DVD and beginning to answer the questionnaire. Participants in the nondeliberating condition, however, had no such intermediate task and were thus able to complete the questionnaire immediately following the trial DVD. This meant that any observed difference in the performance of deliberating and nondeliberating participants could potentially be attributed to the 30 minute time lapse, rather than the presence or absence of the deliberation process. Accordingly, the rumination condition served as a control; these participants engaged in a 30 minute rumination task, thus experiencing the same time lapse between the conclusion of the trial DVD and commencing work on the questionnaire as participants in the deliberating conditions, but without engaging in any group discussion. This rumination task was designed to be akin to an individual deliberation process, so participants still spent the 30 minutes focusing on the content of the trial, but did so individually rather than in groups of four to five participants. To facilitate this task, a rumination worksheet was designed. The worksheet was presented as a decision-making guide, and introduced a series of 12 questions designed to encourage participants to consider aspects of the trial which would normally feature in the deliberation process and be important in reaching a verdict (e.g., which witnesses were most convincing, which pieces of evidence best supported each of the two charges, etc.). Participants were required to respond in a short answer format to as many questions as possible during a 30 minute time period. The worksheet was designed to take longer than 30 minutes to complete, to ensure

that participants remained engaged in the rumination task for the allotted time (See Appendix I for a copy of the rumination worksheet).

Procedure.

The initial allocation to conditions and explanations regarding the trial and the participants' task were the same as those in Experiment 1. Participants assigned to the own notes condition were instructed that they were able to take notes throughout the trial using the materials provided. Participants assigned to the provided notes conditions were informed that they would receive some written materials at the conclusion of the trial to assist in their decision-making (see Appendix J for the complete standardised participant instructions for each condition). Half the participants in each of the note type conditions were informed that they would deliberate in small groups following the trial, and the other half was told that they would not deliberate, but would be required to reach a verdict as an individual. Participants then watched the mock criminal trial.

One third of the participants who were expecting to deliberate were randomly assigned to groups of four to five people, and instructed to deliberate. To enhance ecological validity, participants were not aware that they had been allocated a total of 30 minutes in which to deliberate; they were simply stopped after 30 minutes had elapsed. To ensure consistency in deliberation time, participants were encouraged to sustain their discussion until they were stopped, and follow the deliberation instructions provided (displayed on an overhead projector) if they were unable to continue deliberating for the allocated time. Deliberating participants had access to the relevant set of notes (either their own or the provided notes) during the deliberation, and were encouraged to refer to the notes, and add to them if they wished, throughout the discussion.

Another third of the participants who were expecting to deliberate were told that the experimenter had mistakenly assigned them to the wrong condition, and that they would not be required to deliberate after all but would instead be required to complete a worksheet. The rumination worksheet was presented to participants as a task that was similar to actual deliberation, and participants were encouraged to answer as many questions as possible during the allocated 30 minute period. Participants had access to the relevant set of notes while they completed the rumination worksheet. Finally, the remaining third were told that they had also been assigned to the wrong condition, and would complete the questionnaire immediately rather than deliberating.

Similarly, for the participants who were not expecting to deliberate, one third were told that the experimenter had mistakenly assigned them to wrong condition and that they would actually be required to deliberate, another third were required to complete the rumination worksheet, and the final third of participants not expecting to deliberate were not required to, and completed the questionnaire immediately. Subsequent allocations and instructions were the same as those described above.

Deliberating and ruminating participants completed the questionnaire as soon as the 30 minutes of discussion or rumination time had elapsed. All participants had access to the relevant note type while they completed the questionnaire, and were urged to utilise the notes as much as possible to assist them in selecting the correct answers.

3.7 Results

From the questionnaire responses, total fact and law scores were calculated for each participant, by awarding correctly answered items one point, and incorrect responses zero points. Following the approach taken for analysing Experiments 1

and 2, the objective measures of comprehension were analysed separately from participants' subjective ratings.

Objective measures of comprehension.

A MANOVA was conducted as the initial analysis, with deliberation expectation, deliberation and note type as between subjects factors. The MANOVA revealed significant main effects for deliberation, Wilk's $\Lambda = .91$, $F(6, 456) = 3.66$, $p < .01$, $\eta^2_p = .05$, and for note type, Wilk's $\Lambda = .49$, $F(3, 228) = 78.73$, $p < .001$, $\eta^2_p = .51$. The main effect for deliberation expectation was nonsignificant, Wilk's $\Lambda = .99$, $F(3, 228) = 0.23$, $p = .88$, as was the Deliberation Expectation x Deliberation interaction, Wilk's $\Lambda = .99$, $F(6, 456) = 0.39$, $p = .88$. Nonsignificant results were also recorded for the Deliberation Expectation x Note Type interaction, Wilk's $\Lambda = .99$, $F(3, 228) = 0.47$, $p = .70$, the Deliberation x Note Type interaction, Wilk's $\Lambda = .98$, $F(6, 456) = 0.69$, $p = .66$, and the Deliberation Expectation x Deliberation x Note Type interaction, Wilk's $\Lambda = .97$, $F(6, 456) = 1.31$, $p = .34$. The subsequent univariate ANOVAs for each dependent variable will be discussed in turn.[8]

Fact score.

Although the Deliberation Expectation x Deliberation x Note Type interaction was nonsignificant, $F(2, 230) = 0.43$, $p = .65$, the ANOVA revealed significant main effects for both deliberation, $F(2, 230) = 3.24$, $p < .05$, $\eta^2_p = .03$, and note type, $F(1, 230) = 228.09$, $p < .001$, $\eta^2_p = .50$. A subsequent REGWQ post-hoc test revealed that there were no significant differences between participants in the nondeliberating and ruminating conditions, but both groups achieved significantly

[8] As discussed previously, results for the scenario score measure will not be reported, but the analyses are included in Appendix K.

higher fact scores than participants in the deliberating condition. See Table 11 for mean fact scores.

Table 11

Mean Fact Scores for Each Deliberation Condition

Deliberation Condition	*M*	*SD*	*n*
Deliberation	10.95	3.02	80
Rumination	11.28	2.66	80
Don't Deliberate	11.71	2.58	82

This indicates that participants who did not deliberate achieved significantly higher fact scores, regardless of whether they were also required to individually ruminate or not, than participants who deliberated. For note type, participants who had access to provided notes achieved significantly higher fact scores ($M = 13.29$, $SD = 1.54$) than participants who took their own notes ($M = 9.43$, $SD = 2.34$).

Law score.

Although the Deliberation x Note Type interaction was nonsignificant, $F(2, 230) = 0.85$, $p = .43$, the ANOVA revealed significant main effects for both deliberation, $F(2, 230) = 8.57$, $p < .001$, $\eta^2_p = .07$, and note type, $F(1, 230) = 16.50$, $p < .001$, $\eta^2_p = .07$. The subsequent REGWQ post-hoc test revealed a similar pattern of results as above, such that participants in the ruminating and nondeliberating conditions achieved significantly higher law scores than participants who deliberated. Again, there were no significant differences in the performance of the former two groups. See Table 12 for mean law scores.

Table 12

Mean Law Scores for Each Deliberation Condition

Deliberation Condition	*M*	*SD*	*n*
Deliberation	7.98	2.66	80
Rumination	9.03	2.90	80
Don't Deliberate	9.72	2.80	82

Once again, participants who had access to provided notes achieved significantly higher law scores ($M = 9.63$, $SD = 2.38$) than participants who took their own notes ($M = 8.22$, $SD = 3.13$).

Subjective ratings.

Participants' subjective ratings were again analysed separately from the objective measures of comprehension, using a MANOVA with deliberation expectation, deliberation and note type as between subjects factors. The MANOVA revealed no significant main effects for deliberation expectation, Wilk's $\Lambda = .98$, $F(3, 228) = 1.52$, $p = .21$, or note type, Wilk's $\Lambda = .98$, $F(3, 228) = 1.52$, $p = .21$, though the main effect for deliberation was significant, Wilk's $\Lambda = .94$, $F(6, 456) = 2.38$, $p < .05$, $\eta^2_p = .03$. The Deliberation Expectation x Deliberation interaction, Wilk's $\Lambda = .96$, $F(6, 456) = 1.62$, $p = .14$, Deliberation Expectation x Note Type interaction, Wilk's $\Lambda = .99$, $F(3, 228) = 0.55$, $p = .65$, and Deliberation x Note Type interaction, Wilk's $\Lambda = .98$, $F(6, 456) = 0.79$, $p = .58$ were all nonsignificant. Finally, the Deliberation Expectation x Deliberation x Note Type interaction was also nonsignificant, Wilk's $\Lambda = .99$, $F(6, 456) = 0.57$, $p = .76$. The subsequent univariate ANOVAs for each dependent variable will be discussed in turn.

Verdict confidence.

Although the Deliberation Expectation x Deliberation x Note Type interaction was nonsignificant, $F(2, 230) = 0.18$, $p = .84$, the ANOVA revealed a significant main effect for deliberation for verdict confidence, $F(2, 230) = 3.18$, $p < .05$, $\eta^2_p = .03$. A subsequent REGWQ post-hoc test revealed that participants who did not deliberate rated their verdict confidence as being significantly higher than participants in the rumination condition. However, the verdict confidence ratings of participants who deliberated were not significantly different from either ruminating or nondeliberating participants. See Table 13 for mean verdict confidence ratings.

Table 13

Mean Verdict Confidence Ratings for Each Deliberation Condition

Deliberation Condition	*M*	*SD*	*n*
Deliberation	4.97	1.32	80
Rumination	4.86	1.17	80
Don't Deliberate	5.31	1.06	82

Verdict difficulty.

Although the Deliberation Expectation x Deliberation x Note Type interaction was nonsignificant, $F(2, 230) = 1.12$, $p = .33$, the ANOVA revealed a significant main effect for deliberation expectation, $F(1, 230) = 4.16$, $p < .05$, $\eta^2_p = .02$, however since the corresponding multivariate result was nonsignificant, this result can only be interpreted with caution (Tabachnick & Fidell, 2006). Overall, participants who expected to deliberate returned significantly higher verdict difficulty ratings ($M = 3.90$, $SD = 1.70$) than participants who did not expect to deliberate ($M = 3.50$, $SD = 1.47$).

Law difficulty.

Although the Deliberation x Note Type interaction was nonsignificant, $F(2, 230) = 1.70$, $p = .19$, the ANOVA revealed a significant main effect for deliberation, $F(2, 230) = 3.07$, $p < .05$, $\eta^2_p = .03$. However a subsequent REGWQ post-hoc test did not find any significant differences between the three means. Examination of the means themselves indicates that deliberating participants rated the law as being more difficult to understand than nondeliberating and ruminating participants. See Table 14 for mean ratings of law difficulty.

Table 14

Mean Law Difficulty Ratings for Each Deliberation Condition

Deliberation Condition	*M*	*SD*	*n*
Deliberation	3.44	1.44	80
Rumination	2.98	1.25	80
Don't Deliberate	3.03	1.19	82

Utility ratings.

Own notes.

Participants in this study only rated the utility of their own notes on a single rating scale. A between subjects ANOVA was run with deliberation expectation and deliberation as between subjects factors to compare the utility ratings of participants' own notes for participants who expected and did not expect to deliberate, and for participants who deliberated, did not deliberate, and ruminated. The ANOVA did not return any significant results. The main effects for deliberation expectation, $F(1, 116) = 0.64$, $p = .43$, and deliberation, $F(2, 116) = 0.51$, $p = .60$, were both

nonsignificant, as was the Deliberation Expectation x Deliberation interaction, $F(2, 116) = 1.39$, $p = .25$. Overall, participants in the own notes conditions rated their notes as being moderately useful ($M = 4.66$, $SD = 1.61$).

An ANOVA was conducted with deliberation expectation and deliberation as between subjects factors, to determine whether there were any significant differences in the number of pages of notes participants in the own notes conditions took. The ANOVA revealed a significant main effect for deliberation, $F(2, 116) = 3.89$, $p < .05$, $\eta^2_p = .69$, and a significant Deliberation Expectation x Deliberation interaction, $F(2, 116) = 4.04$, $p < .05$, $\eta^2_p = .71$, as shown in Figure 5.

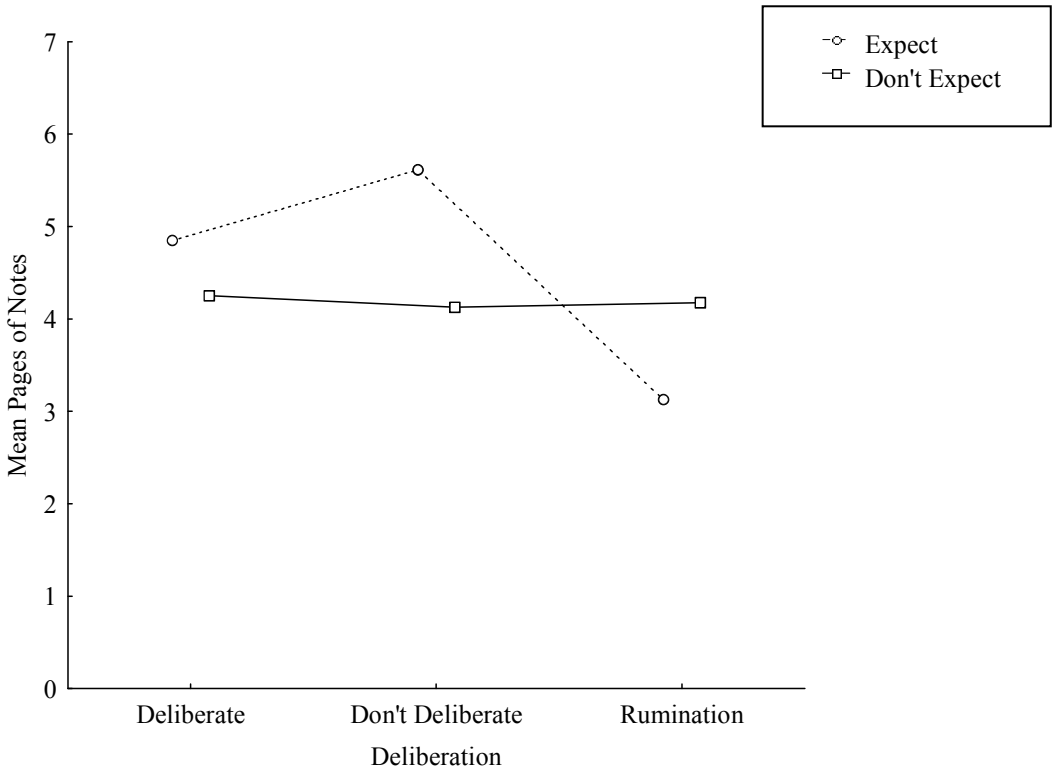

Figure 5. Mean pages of notes taken by participants who expected and did not expect to deliberate in each of the deliberation conditions. Points are offset horizontally for clarity.

A breakdown analysis of the interaction performed with a Bonferroni corrected alpha of .025 indicates that for nondeliberating participants, those who expected to deliberate recorded significantly more pages of notes than participants who did not expect to deliberate, $F(1, 116) = 5.93$, $p < .025$. For participants in the deliberating and ruminating conditions, pages of notes taken did not differ significantly based on deliberation expectation, $F(1, 116) = 0.86$, $p = .36$ and $F(1, 116) = 2.64$, $p = .11$, respectively.

Provided notes.

A repeated measures ANOVA was conducted, with deliberation expectation and deliberation as between groups factors and component as a within groups variable, to compare utility ratings of the provided notes for participants who expected and did not expect to deliberate, and for participants who deliberated, did not deliberate, and ruminated. Greenhouse Geisser corrections were used where appropriate. The main effect for component was significant, $F(3.4, 384.3) = 18.29$, $p < .001$, $\eta^2_p = 1.0$. See Table 15 for mean utility ratings.

Table 15

Mean Utility Ratings for Each Provided Notes Component

Component	*M*	*SD*	*n*
Transcript	5.60	1.31	120
Chronology	5.55	1.49	120
Offence Criteria	5.57	1.52	120
Flowcharts	4.38	1.85	120
Instructions	5.10	1.59	120

Bonferroni adjusted pairwise comparisons indicated that the transcript ($p < .001$), chronology of events ($p < .001$), offence criteria ($p < .001$) and judicial instructions ($p < .01$) received significantly higher utility ratings than the flowcharts. Participants also rated the transcript as being significantly more useful than the judicial instructions ($p < .01$). There were no other significant differences between the judicial instructions and other components of the provided notes.

Own notes versus provided notes.

Unlike in Experiment 1, participants provided a single rating of the global utility of their own notes, but there was still no global utility rating for provided notes. So, to determine whether provided notes received overall higher mean utility ratings than own notes, utility ratings for the five provided notes components were averaged into a global measure of utility. An independent samples *t*-test was conducted to compare these global ratings of utility, revealing that provided notes received significantly higher overall utility ratings ($M = 5.24$, $SD = 0.99$) than own notes ($M = 4.66$, $SD = 1.61$), $t(202.6) = -3.37$, $p < .01$, equal variances not assumed.

Deliberation.

Participants who took part in the process of deliberation (regardless of deliberation expectation) rated the utility of that process on a 7-point scale. A between subjects ANOVA, with deliberation expectation and note type as between groups factors, was conducted to determine whether ratings of deliberation utility differed between groups. The ANOVA revealed no significant results. The main effects for deliberation expectation, $F(1, 75) = 0.01$, $p = .93$, and note type, $F(1, 75) = 2.23$, $p = .14$, were both nonsignificant, as was the Deliberation Expectation x Note Type interaction, $F(1, 75) = 0.14$, $p = .71$.

Participants who did not deliberate (regardless of deliberation expectation), rated how useful they believed the process would have been, had they had the chance to take part in it. A between subjects ANOVA, with deliberation expectation and note type as between groups factors, was conducted to determine whether ratings of potential deliberation utility differed between groups. The ANOVA revealed a significant main effect for deliberation expectation, $F(1, 154) = 7.48$, $p < .01$, $\eta^2_p = .78$, such that participants who did not expect to deliberate rated potential deliberation as being significantly more useful ($M = 5.03$, $SD = 1.28$) than participants who expected to deliberate ($M = 4.39$, $SD = 1.71$). The Deliberation Expectation x Note Type interaction was nonsignificant, $F(1, 154) = 3.08$, $p = .08$.

Verdicts.

Frequencies and percentages of participants choosing guilty and not guilty verdicts were calculated for both the murder charge and the suicide charge, and are displayed in Table 16.

Table 16

Frequencies and Percentages of Murder and Suicide Charge Verdicts

			Suicide Verdict		Murder Verdict	
			Guilty	Not Guilty	Guilty	Not Guilty
Own Notes	Expect	Deliberate	6 (30%)	14 (70%)	0 (0%)	20 (100%)
		Don't Deliberate	7 (31.8%)	15 (68.2%)	0 (0%)	22 (100%)
		Ruminate	8 (40%)	12 (60%)	1(5%)	19 (95%)
	Don't Expect	Deliberate	3 (15%)	17 (85%)	0 (0%)	20 (100%)
		Don't Deliberate	4 (20%)	16 (80%)	0 (0%)	20 (100%)
		Ruminate	10 (50%)	10 (50%)	0 (0%)	20 (100%)
Provided Notes	Expect	Deliberate	5 (25%)	15 (75%)	0 (0%)	20 (100%)
		Don't Deliberate	12 (60%)	8 (40%)	2 (10%)	18 (90%)
		Ruminate	8 (40%)	12 (60%)	0 (0%)	20 (100%)
	Don't Expect	Deliberate	5 (25%)	15 (75%)	0 (0%)	20 (100%)
		Don't Deliberate	7 (35%)	13 (65%)	1 (5%)	19 (95%)
		Ruminate	6 (30%)	14 (70%)	1 (5%)	19 (95%)

The cell counts of two or less for guilty verdicts on the murder charge were insufficient for further analyses to be performed (Howell, 2010), but a chi-square test was conducted for the suicide charge, to determine if the frequency of guilty and not guilty verdicts differed significantly between note type groups. This revealed one significant difference: for participants who took their own notes and did not expect to deliberate, the likelihood of arriving at a not guilty verdict was significantly higher than the likelihood of arriving at a guilty one, regardless of deliberation condition, $\chi^2(2, N = 60) = 7.06, p < .05$.

3.8 Discussion

Objective measures.

Fact score.

A deliberation expectation by deliberation by note type interaction was expected for this dependent variable, but the results revealed only significant main effects for deliberation and note type. As expected, participants in the provided notes conditions achieved significantly higher fact scores than those who took their own notes, however the lack of interaction between note type and any other variable suggests that, contrary to expectations, differential impact of deliberation on the two note types was not observed. The main effect for deliberation was also not in line with the predictions. It was anticipated that deliberation would constitute a helpful process, at least for those participants who entered the process with a basic understanding of the facts of the case. Instead, the results revealed that participants in both the nondeliberating and ruminating conditions achieved significantly higher fact scores than deliberating participants, regardless of note type or deliberation expectation. There were no significant differences between the fact scores of nondeliberating and ruminating participants, suggesting that the relatively poor performance of deliberating jurors could not be attributed to the time-lapse between the conclusion of the trial DVD and completion of the questionnaire.

Although it was anticipated that the process of deliberation might not prove particularly advantageous in certain circumstances (e.g., where poor attention and lack of useful notes led to a deficient knowledge base from which to begin deliberations), fact scores were not expected to be significantly lower for deliberators than nondeliberating or ruminating participants. It is also perhaps surprising that even the wealth of knowledge accessible via the provided notes did not seem able to

mitigate the apparent disadvantage associated with deliberation. Failure to record any significant results with regard to the deliberation expectation variable suggests that this particular manipulation did not produce any anticipated effects, in direct contrast to the predictions.

Law score.

For law score, a deliberation by note type interaction was anticipated, but results revealed the same pattern of results as for fact score. The significant main effect for note type again revealed higher law scores for participants in the provided notes conditions, as compared to notetaking participants, and the significant main effect for deliberation indicated that participants in the ruminating and nondeliberating conditions achieved significantly higher law scores than participants who deliberated, with no significant difference between the former two groups.

Since the same pattern of results was recorded for both measures of objective performance, this adds some weight to the subsequent implications and conclusions. Results indicated firstly that contrary to the predictions, the deliberation expectation manipulation failed to produce any measurable results, thus suggesting that an induced anticipation of deliberating in a group, or working alone, did not affect participants' motivation strongly enough to influence their performance on the later questionnaire task. This is in direct contrast to the results of Henningsen et al.'s (2000) study, which demonstrated that the simple anticipation of working in a group was sufficient to induce motivation losses typically associated with social loafing for jurors who had been given information about a civil trial. An information recall measure indicated that jurors who anticipated making the decision in a group of four or eight people recalled significantly less information than jurors who thought they would have to make the decision alone. Differences between the studies in

dependent variables may be partly responsible for the discrepancy in results, however there is also one important methodological difference between Henningsen et al.'s study and the current experiment which might explain the failure of the deliberation expectation manipulation to produce any effects in the current study. In this experiment, participants induced to anticipate deliberation were told to expect an opportunity to deliberate with other participants, before being required to complete the questionnaire and arrive at their verdict individually, so although there was an indication of group discussion, it was not suggested that participants would be able to perform their ultimate task within the context of this group. This technicality may have been sufficient to spoil the expectation manipulation, as the loafing effect depends on individual input remaining unidentifiable (Jackson & Harkins, 1985).

In addition, Henningsen et al. (2000) drew attention to the fact that a number of factors may influence jurors' predeliberation efforts, including the perceived nature of the decision type; jurors who perceive the task to be intellective have been found to pool more information than jurors who perceive the task to be judgmental (Stasser & Stewart, 1992). Participants in the current study were aware that they would be required to answer multiple-choice questions about the information presented during the trial (for which there would presumably be an objectively correct answer) as well as a reach a verdict; it is possible that this led participants to perceive their task as more intellective, and therefore diminished any motivation losses they may have experienced as a result of group-work anticipation.

Secondly, the results consistently demonstrate that deliberating participants achieved significantly lower scores on measures of fact and law comprehension than nondeliberating and individually-ruminating participants. McCoy et al. (1999) conducted a similar comparison of deliberating, nondeliberating and ruminating jurors, finding quite different results; postdeliberation jurors demonstrated more

sophisticated reasoning styles than individual-rumination jurors and those who had not deliberated. It should be noted, however, that McCoy et al. were investigating reasoning competence via questions jurors answered about their own reasoning processes, rather than directly measuring juror comprehension of the case itself. McCoy et al.'s is not the only study to demonstrate the benefits of the deliberation process, and present results contrary to those of the current experiment. Severance et al. (1984) also found deliberation to have a positive effect on juror comprehension of judicial instructions, and Ellsworth (1989) found that the process of deliberation did improve jurors' understanding and recall of factual issues, though it did not offer any measurable advantage in aiding juror comprehension of legal concepts. Unlike Ellsworth, the current experiment failed to observe any advantage for deliberating jurors on fact questions.

Results of the current experiment are more consistent with other studies that have questioned the utility of deliberation (e.g., Elwork et al., 1982; Rose & Ogloff, 2001), however it should be noted that even those studies that have failed to find any performance advantage following deliberation have only recorded a lack of significant difference between the achievements of deliberating and nondeliberating participants. The current study, on the other hand, has recorded a significant difference in the opposite direction, suggesting that the deliberation process is actually detrimental to juror comprehension, rather than simply offering no measurable advantage.

The current study focused on examining the potential effects of social loafing related motivation losses on participants' predeliberation information processing, but failed to observe any impact of the manipulation inducing participants to anticipate working alone or deliberating in groups. However, a group's actual productivity may be lower than a group's potential productivity not only as a result of motivation

losses, but also as a result of coordination losses (Henningsen et al., 2000). These coordination losses may provide an explanation for the significantly poorer performance of deliberating jurors in the current experiment. Coordination losses result from an imperfect meshing of individual efforts in groups, where groups fail to effectively draw on the resources of each member or discuss information held by a single group member due to factors such as differing interpersonal styles (Steiner, 1972). For example, one member may be unable to present an idea while other members are dominating the conversation, or a less confident group member may feel reluctant to express their opinion in such a forum (Diehl & Stroebe, 1987). In the current experiment, participants who deliberated in groups not only failed to perform significantly better than nondeliberating and ruminating participants, they actually achieved significantly lower scores than participants in the other conditions. It would seem then, that not only were deliberating participants unable to effectively pool their resources, the discussions they participated in actually impaired their understanding of the relevant issues. Perhaps differing individual opinions and varying interpretations of factual and legal concepts served to confuse rather than clarify the issues participants were grappling with, and this confusion was reflected in the poorer scores achieved by deliberating participants.

Of course, the difficulty which arises is the problem of distinguishing between motivation and coordination losses occurring during group interaction (Henningsen et al., 2000). By investigating predeliberation thinking only, Henningsen et al. (2000) were able to effectively isolate motivation losses because no group interaction eventuated, but the current experimental design does not allow such precise compartmentalisation. The deliberation expectation manipulation in the current experiment was predicted to induce predeliberation motivation losses. Such predeliberation motivation losses were not observed as a result of this manipulation,

but it does not follow that motivation losses were not also at work during the deliberation process itself. Individual contributions to group discussion are a function of the individual's ability to encode information before the discussion, recall information during the discussion, and select it for discussion once it is recalled (Stasser, Stewart, & Wittenbaum, 1995). So, considering the relevant information processing tasks at work, the poorer performance of deliberating participants may also be attributed to motivation losses occurring during group discussion; for example, group members may have chosen to not exert the effort necessary to recall information during the discussion itself, or encode information presented by other members during discussion because they believed others would do so.

Thirdly, and consistent with the outcomes of both Experiments 1 and 2, the results of the current experiment again demonstrate that participants with access to provided notes achieved significantly higher scores on measures of fact and law comprehension than participants who took their own notes. However, the absence of any interactions involving the note type variable indicated that both participants' own notes and provided notes were similarly affected by the influence of the other manipulations. Following Diamond and Levi's (1996) proposition that the amount of assistance provided by deliberation is dependent upon the number of jurors who have a good understanding of the relevant issues prior to starting deliberation, it was anticipated that the provided notes would deliver this understanding more effectively than participants' own notes. Although the deliberation expectation manipulation was expected to influence the quality of participants' own notes, it is probably fair to say that even though this manipulation was unsuccessful, provided notes should still constitute a more comprehensive knowledge base than own notes. It was therefore surprising to learn that even though participants with access to provided notes outperformed those who took their own notes, the impact of the deliberation

manipulation was essentially equivalent across both note types. Although no specific prediction was made about the possibility that the deliberation process would prove disadvantageous, it would have been hoped that the comprehensive nature of the provided notes would mean they were more robust in withstanding any negative influences than participants' own notes. Again, the consistent impact of the deliberation manipulation across both note types suggests this is not the case. Although this does not undermine the relative efficacy of provided notes as a comprehension aid, it does highlight that they may be just as fallible as other jury-aids.

So, in summary, the results of the objective measures of performance suggest that the deliberation expectation manipulation did not have a measurable impact on participant motivation. Although participants in the provided notes conditions achieved significantly higher fact and law scores than those who took their own notes, levels of comprehension for both factual and legal information were lower for jurors who participated in the deliberation process regardless of the type of resources they had access to. It would be interesting to extend these findings by further clarifying whether the poorer performance of deliberating jurors can be attributed to motivation or coordination losses. Since jury deliberation is unlikely to be abolished in the near future, possible remedies which may redress this problem will also be an important research pursuit.

Subjective measures.

The anticipated deliberation expectation by deliberation by note type interaction for the verdict confidence measure was not confirmed by the results. Instead, a main effect for deliberation was revealed, indicating that nondeliberating participants rated their verdict confidence as being significantly higher than

ruminating participants. The verdict confidence ratings of deliberating participants were not significantly different from either ruminating or nondeliberating participants. Surprisingly, note type produced no significant results for this measure, suggesting that participants' subjective experience of the process did not differ according to the type of material they had access to.

Once again, the predicted deliberation expectation by deliberation by note type interaction for the verdict difficulty measure was not supported, and the results instead revealed a significant main effect for deliberation expectation, which can only be interpreted with some caution since the corresponding multivariate result was nonsignificant. Overall, participants who expected to deliberate returned significantly higher verdict difficulty ratings than participants who did not expect to deliberate.

A deliberation by note type interaction was hypothesised for the law difficulty measure, but results revealed a significant main effect for deliberation. Although examination of the means themselves indicated that deliberating participants rated the law as being more difficult to understand than did nondeliberating and ruminating participants, a subsequent post-hoc test did not find any significant differences between the three means. Contrary to expectations, law difficulty ratings did not differ significantly according to note type, suggesting that access to provided notes did not improve participants' subjective experience of trying to understand the law. For participants with access to provided notes, significantly lower law difficulty ratings were expected from deliberating participants, than from nondeliberating and ruminating participants. Although the difference was nonsignificant, the observed trend for deliberating participants to rate the law as being more difficult to understand than nondeliberating and ruminating participants is contrary to expectations, but consistent with the pattern of results returned by both

objective measures of performance. This suggests that participants' objective performance was partially reflected in their subjective experience of deliberation.

Of those experiments mentioned in the introduction to this study, the only one to include measures of participants' subjective impressions of deliberation was that conducted by Severance et al. (1984). Despite recording significant differences between conditions on objective measures of performance, juror ratings of the overall quality of the deliberation or the degree to which they participated were not affected by the variable manipulations. Jurors also rated their opinions of how appropriate the time spent reviewing the judicial instructions was, and none of the experimental manipulations caused a reliable variation.

The subjective measures utilised throughout this series of studies have so far produced little of any value. In both Experiments 1 and 2, the results were inconsistent, not in line with the predictions, and in some cases, quite inexplicable. It seems fair to say that the same holds true for the results of the subjective measures in this experiment. The failure to receive support for the hypotheses relating to the subjective measures either suggests that participants' subjective experience of the mock trial and related tasks is not uniformly influenced by the manipulated variables, or it identifies something inherently problematic in the measures themselves.

Utility measures.

A main effect for deliberation expectation was anticipated for the utility of own notes measure, such that participants who did not expect to deliberate would return significantly higher utility ratings than participants who expected to deliberate. No significant results were observed for this measure, suggesting either that the deliberation expectation manipulation failed to produce any measurable effects on participants' motivation levels and subsequent note quality, or that any such effects

were not reflected in participants' subjective judgements of the utility of their own notes.

Notably, a comparison of the number of notes pages taken by participants did return a significant deliberation expectation by deliberation interaction. Participants who expected to deliberate recorded significantly more pages of notes than participants who did not expect to deliberate, but this effect only applied for participants in the nondeliberating condition. Considering that actual allocation of participants to deliberation conditions did not occur until after they had completed their notes, it is difficult to make sense of the differential results according to deliberation condition, however the discovery that participants who had expected to deliberate took significantly more pages of notes than participants who had not expected to deliberate raises an interesting point; it has been suggested that the increased accountability that comes from having to justify one's position to others actually combats potential motivation losses (Tetlock, 1983). It is therefore possible that participants expecting to deliberate felt compelled to be able to present logical arguments to fellow jurors, and this was reflected in the significantly greater pages of notes taken.

No significant differences in the utility ratings of provided notes were predicted between conditions, and none were found. The main effect for component was significant and, as predicted, the transcript, chronology of events, offence criteria and judicial instructions received significantly higher utility ratings than the flowcharts. As in Experiment 1, this result is attributed to the fact that the flowcharts focus more on assisting jurors in arriving at a verdict, which constitutes one single contained task for the participants, compared to answering 30 multiple-choice questions about the facts and law of the case. Although no other significant

differences between the individual components were anticipated, the transcript was also rated as being significantly more useful than the judicial instructions.

Although the comparison of utility of own and provided notes was not a planned one, and therefore no predictions were made, it was unsurprising to learn that provided notes once again received significantly higher overall utility ratings than own notes.

For participants who did eventually go on to deliberate, a deliberation expectation by note type interaction was anticipated for the deliberation utility measure but no significant results were revealed. This suggests that despite the predictions, neither deliberation expectation nor note type influenced participants' subjective experience of deliberation utility, thus failing to support the hypotheses for this measure. This result is more consistent with the so far problematic nature of such subjective measures experienced in the current series of studies, and the lack of significant results delivered by other researchers using similar dependent variables (Ellsworth, 1989).

For utility of potential deliberation (rated by participants in the nondeliberating and ruminating conditions), a deliberation expectation by note type interaction was anticipated. Contrary to the hypotheses, note type failed to have any appreciable impact on these utility ratings. While participants who had expected to deliberate were predicted to rate potential deliberation as being significantly more useful (because they were missing out on a process they had expected to participate in), the significant main effect for deliberation expectation instead revealed that those who did not expect to deliberate returned significantly higher ratings of potential deliberation utility than those who expected to deliberate. Perhaps the idea of deliberation seemed more novel to participants who had not expected to have such an opportunity.

Verdicts.

The cell counts of two or less for guilty verdicts on the murder charge were insufficient for further analyses to be performed, but a chi-square test conducted for the suicide charge revealed that for participants who took their own notes and did not expect to deliberate, the likelihood of arriving at a not guilty verdict was significantly higher than the likelihood of arriving at a guilty one, regardless of deliberation condition. As previously discussed, the purpose of jury-aid implementation is not to alter verdict rates, and if a particular jury-aid had such an effect, this would not be a constructive result. Although a significant difference in likelihood of reaching a particular verdict was noted in the current experiment, the fact that the conditions leading to this result do not exist within a real courtroom environment (i.e., real jurors are never told that they will not have the opportunity to deliberate) means that this is less of a concern.

Future research.

Although such matters will usually be addressed in the general discussion, there are some methodological issues which are particularly relevant to the current study, as it is the only one of the series to involve deliberation. Group discussion was an important component of this study, but, in-keeping with the other experiments in the series, individual comprehension still remained the unit of measurement. The main limitation of this study then, is a level of analysis issue. The results of this study lead to the conclusion that levels of individual comprehension are lower for participants involved in deliberation-style group discussion than for those who are not, but they do not provide any information about whether a group of participants are successfully able to pool their resources and achieve higher scores on a comprehension task than individuals completing the same

assessment; it is unclear to what extent poor juror comprehension translates into poor jury comprehension. Since real deliberating jurors both discuss the trial and complete their assigned task of arriving at a verdict as a group, a study clarifying the presence of any differences between individual and group comprehension levels would provide an important addition to this body of research. Although using the jury as the unit of analysis would require large numbers of participants (at least four to five "group" participants for every "individual" participant) and a substantial loss of power, the findings would be justifiably valuable.

3.9 Conclusion

With the superiority of provided notes over own notes established by Experiments 1 and 2, this study was designed to examine how the efficacy of own and provided notes would be impacted by other processes relevant in a real-world jury situation: namely the anticipation of working in a group, and the deliberation process itself. Perhaps the most interesting and unexpected result to emerge from this experiment was the finding that, not only did deliberation fail to provide any measurable advantage, but the comprehension of deliberating participants overall was lower than that of nondeliberating and ruminating participants. Although not the primary aim of this experiment, this result, which is contrary to much of the research in this area, raises some important questions about assumptions of group superiority.

Of more interest in the context of this series of experiments, was the impact of deliberation expectation and deliberation on the comparative efficacy of the two note types. Comprehension scores of participants with access to provided notes were again significantly higher than those of participants who took their own notes, but disappointingly, no differential effects for the two note types were observed. As a comprehensive, court-prepared set of materials, the provided notes were expected to

minimise the potential difficulties arising from deliberation expectation, and maximise the potential benefits of the deliberation process. While deliberation expectation did not have any measurable effect on juror comprehension, negative effects were observed as a result of the deliberation process itself, with deliberating jurors consistently achieving significantly lower comprehension scores than nondeliberating and ruminating participants. Although no explicit predictions were made concerning the possibility that deliberation may constitute an unhelpful process, it follows that the comprehensive nature of the provided notes would again be expected to minimise any negative effects as compared to own notes. Instead, the results revealed that participants with provided notes and those with own notes were similarly negatively impacted by the deliberation process, indicating that the benefits conferred by provided notes (although still greater than those conferred by own notes) were just as susceptible to the negative effects of group discussion.

Experiment 4

4.1 Overview

The comparative efficacy of own and provided notes may be influenced by a number of different factors. Experiment 3 investigated the impact of deliberation expectation and the deliberation process, while the final experiment in this series was designed to examine the interaction between the two note types and trial complexity. Jury-aid researchers have recognised the potential for trial complexity to have a qualifying effect on the efficacy of such aids, and a large component of the body of research examining jury-aid efficacy has manipulated trial complexity to explore this (Bourgeois et al., 1993). There is still no clear understanding, however, of how trial complexity influences or interferes with jurors' decision-making abilities,

comprehension, and in turn with the jury-aids provided (Findlay, 2001; Horowitz, ForsterLee, & Brolly, 1996; Payne, 1976).

4.2 Trial Complexity

Trial complexity itself continues to be conceptualised in a number of different ways, and a single consistent definition remains elusive (Kramer & Kerr, 1989). Lempert (1981) suggested that criteria which may give some indication of trial complexity include trial length, degree of voluminous evidence, and complexity of legal standards. MacCoun (1987, 1989) addressed the question of trial complexity more directly and comprehensively, identifying three forms of trial complexity: dispute complexity (including the number of disputants and issues); evidence complexity (quantity and consistency of evidence, and reliability and technicality of evidence); and decision complexity (including legal complexity and complexity of inferential chains).

Heuer and Penrod (1994) determined a conceptualisation of trial complexity by asking the 228 judges participating in their field trial to provide information about numerous variables relating to trial complexity (e.g., number of witnesses, number of claims, trial duration, complexity of legal argument). A principle components analysis with varimax rotation was performed on these responses, and revealed three components of complexity which differ slightly from previous characterisations of the construct (Lempert, 1981; MacCoun, 1987); legal complexity, evidence complexity and length of trial.

Horowitz et al. (1996) provided yet another way to classify dimensions of trial complexity, suggesting that the components of complexity which are most immediately relevant to a juror's task are decision complexity (the intricacies of the legal issues, and the juror's ability to apply these), and evidence complexity.

Evidence complexity is further divided into volume of evidence to be processed (including the number of witnesses and number of plaintiffs/defendants, the number and similarities of injuries alleged), the clarity of evidence (whether the evidence clearly favours one side or is ambiguous), and the comprehensibility of the evidence itself (including the intricacy and specialisation of the language, and the difficulty of the evidentiary issues).

Horowitz et al. (1996) examined the impact of two parts of the evidence complexity dimension from this conceptualised framework of trial complexity, focusing on the effect of the number of plaintiffs and witnesses who testify (volume of evidence), and the effect of language technicality (comprehensibility of evidence) on juror decision-making. Mock-jurors viewed a toxic torts case which involved either four plaintiffs or eight plaintiffs (low vs. high information load), and which used complex legal jargon and expression, or more simple expression and lay terms (high vs. low language complexity). Information load seemed to affect jurors' liability decisions, with those in the low information load condition assigning more blame to the defendant, in accordance with the direction of the evidence; conversely, jurors in the high information load condition assigned more blame to the plaintiffs, which was clearly counter to the evidence. Language complexity, on the other hand, affected jurors' ability to distinguish differentially worthy plaintiffs, with less complex language allowing more appropriate distinction between plaintiffs. Only in the low information load and low language complexity conditions, however, were jurors able to award appropriate compensation. So, high information load seemed to lead to suboptimal processing of information, such that jurors misinterpreted the direction of the evidence, and while language complexity did not affect the overall outcome, it did obscure distinctions between the plaintiffs.

4.3 Relationship Between Trial Complexity and Jury-Aids

Such research indeed suggests that particular jury-aids might be better suited to particular types of complexity. The elaboration likelihood model (Petty & Cacioppo, 1986) and the heuristic-systematic model (Chaiken, Lieberman and Eagly, 1989) both suggest that information accessibility and message comprehensibility will impact individuals' ability to engage central processing routes and handle information in a systematic manner. It therefore seems logical to suggest that different types of jury-aid will provide greater information accessibility and message comprehensibility, depending on how directly they address the kind of complexity jurors are facing. Heuer and Penrod (1994) suggested that where trial complexity concerns complex evidence, permitting jurors to ask questions may be the most useful type of assistance, whereas for lengthy trials, notetaking may improve juror comprehension and recall. Finally, where the legal issues covered in the trial are particularly complex, written judicial instructions and preinstruction on the law may be the most effective interventions. Some research has combined particular jury-aids with various types of complexity to test such hypotheses.

ForsterLee and Horowitz (1997) manipulated trial complexity by changing the extent of the defendant's liability in a video re-enactment of a toxic torts trial in which jurors were permitted to take notes. Jurors attempting to make compensatory awards to plaintiffs were instructed either that the defendant was 70% liable (a less ambiguous condition for jurors), or 40% liable (a more ambiguous decision-making condition). While notetaking jurors showed improved performance overall, the low liability condition vitiated the effectiveness of notetaking as a cognitive aid to some extent, thus suggesting that notetaking is beneficial when jurors confront a task of moderate difficulty, but when facing more ambiguous evidence, provides little advantage.

Heuer and Penrod's (1994) field experiment, which determined trial complexity to consist of complexity of evidence, complexity of law, and trial length, also examined the utility of juror notetaking and question asking in trials with varying levels of each complexity dimension. Although the presence of additional aids was not manipulated by the experimenters, use of judicial commentary and summary, pattern instructions, juror orientation processes and special verdict forms was reported. Results of this study confirmed that the efficacy of particular jury-aid procedures was qualified by the type of complexity the trial was characterised by. Juror questions were found to be most beneficial to jurors in cases high in legal and evidentiary complexity, but provided little help where the trial consisted of large quantities of information. The interactions between juror notetaking and trial complexity, however, were difficult to properly assess. It was expected that notetaking would be most beneficial where quantity of information was high, but no such result was found. Special verdict forms and orientation procedures did not produce consistent interactions in the same direction, while judge's commentary and summary consistently produced a negative result, such that for cases high in evidence complexity, judicial commentary was perceived as being less helpful. Finally, legal complexity was found to be most challenging for jurors in cases where judges relied heavily on pattern instructions. Of course, it must be noted that Heuer and Penrod's (1994) conclusions are based solely on jurors' own assessments of their trial experience, rather than objective measures of performance.

Horowitz and Bordens (2002) used a videotaped civil trial to investigate the effects of trial complexity and notetaking on compensation and damages awarded. Results indicated that six-person juries exposed to the high information load version (involving four plaintiffs) who did not take notes returned significantly greater compensation awards, but such biases towards overvaluing the claims of multiple

plaintiffs were mitigated where notetaking was permitted. However, this effect was reversed for jurors exposed to the low information load condition (involving one plaintiff); notetaking jurors awarded higher compensation than non-notetaking ones. High information load was also associated with greater variability of jurors' punitive damage awards. The experimenters had predicted that notetaking would decrease this variability, but this hypothesis was not confirmed.

Bourgeois et al. (1993) examined the impact of allowing transcript access for jurors who were exposed to a high evidence complexity or low evidence complexity version of a medical malpractice case. Evidence complexity was manipulated by the amount of medical jargon and technical language implemented. These researchers proposed that transcript access would facilitate systematic processing, particularly when jurors were exposed to complex and technical information, and this prediction was supported, at least for jurors' verdict scores. The trial was adapted such that systematic processing of the evidence should result in a decision in favour of the defendant; jurors confronting highly technical information without access to trial transcripts favoured the plaintiff, whereas jurors with access decided for the defendant. Jurors exposed to the low technicality version decided for the defendant regardless of whether they were permitted to access the transcript. However, on a dependent variable measuring jurors' evidence processing via a recognition test, no significant results were recorded.

There is, therefore, still much room for clarification on the issue of how different dimensions of trial complexity affect the benefits provided by various jury-aids (Harding, 1988), as none of the previously published research has investigated the comparative benefits of different types of jury-aids in the context of varying trial complexity type, using an objective measure of recall or comprehension. The aim of this fourth study, then, was to examine the benefits conferred by own and provided

notes under varying complexity conditions. The dimensions of complexity subjected to empirical examination in this study via different versions of the mock trial were Heuer and Penrod's (1994) legal complexity, evidence complexity and trial length. A between subjects factorial design was employed, in which both note type and complexity type were manipulated, and juror comprehension was assessed in the same manner as the previous studies.

4.4 Hypotheses

These hypotheses are based firstly on the results of the previous experiments conducted in this series, which have firmly established the superiority of provided notes over participants' own notes. They are also based to some extent on previous research, however the amount of directly relevant previous research is limited. The only research which has previously manipulated a dimension of trial complexity and compared jurors' own notes with another type of jury-aid using an objective measure of performance is that conducted by Bourgeois et al. (1993), which returned significant results with regard to jurors' verdicts, but failed to produce any significant results relating to juror comprehension (as assessed by a recognition task).

Thus, this experiment was quite exploratory in nature, and the hypotheses were guided by logical predictions regarding which note type would increase the likelihood of systematic information processing using central routes, by enhancing information accessibility and message comprehensibility, based on the type of complexity the notes were attempting to address (Petty & Cacioppo, 1986).

Objective measures.

A complexity type by note type interaction was anticipated for the fact score dependent variable. Participants with access to provided notes were expected to achieve significantly higher fact scores than participants who took their own notes

across all complexity types, however the magnitude of the advantage conferred by provided notes was predicted to be smaller for participants in the length complexity condition. Although provided notes were still expected to constitute a more comprehensive resource than participants' own notes, it was thought that by essentially increasing the information load placed on participants exposed to length complexity by adding to the overall amount of material, their relative efficacy would decrease. It was also predicted that participants in the length complexity condition would achieve significantly lower fact scores than participants in the other complexity conditions; it was thought that the increased fact-related information load these participants were exposed to would lead to overall poorer performance.

A complexity type by note type interaction was anticipated for the law score dependent variable. With regard to the influence of note type, the pattern of results was expected to reflect that described above (the magnitude of the advantage conferred by provided notes was predicted to be smaller for participants in the length complexity condition for the same reasons described above). On the other hand, it was also predicted that participants in the legal complexity condition would achieve significantly lower law scores overall than participants in the other complexity conditions. Although this dependent variable did not test their understanding of the additional law they were exposed to, it was thought that this exposure to additional legal principles might interfere with participants' ability to comprehend the fundamental legal information, leading to poorer overall performance.

Manipulation checks.

The evidence score dependent variable was a measure of participants' comprehension of additional information contained within the evidence complexity version of the trial, thus acting as a manipulation check as well as a dependent

variable. Since those in the evidence complexity condition were the only participants exposed to this information, a complexity type by note type interaction was anticipated, such that evidence scores for those participants were expected to be significantly higher than those for participants in the control, legal and length complexity conditions. In the latter three conditions, no differences were expected between the scores of participants according to note type, but in the evidence complexity condition, participants with provided notes were expected to achieve significantly higher evidence scores than those who took their own notes, because the provided notes would constitute a more comprehensive source of information review (Chaiken & Eagly, 1976; Bourgeois et al., 1993).

Considering that the manslaughter score dependent variable also doubled as a manipulation check, such that participants in the legal complexity condition were the only participants exposed to the information required to answer the manslaughter questions, a complexity type by note type interaction was again anticipated. Manslaughter scores for these participants were expected to be significantly higher than those for participants in the control, evidence and length complexity conditions. In the latter three conditions, no differences were expected between the scores of participants according to note type, but in the legal complexity condition, participants with provided notes were expected to achieve significantly higher manslaughter scores than those who took their own notes, because the provided notes would constitute a more comprehensive source of information review.

Although the manslaughter scenario questions presented participants with novel scenarios, successful completion required knowledge about legal concepts related to manslaughter, which only participants in the legal complexity condition had any exposure to. Thus, once again a complexity type by note type interaction was anticipated, with manslaughter scenario scores for participants in the legal

complexity condition expected to be significantly higher than those for participants in the remaining complexity conditions. In the remaining three conditions, no differences were expected between the scores of participants according to note type, but in the legal complexity condition, participants with provided notes were expected to achieve significantly higher manslaughter scenario scores than those who took their own notes, because the provided notes would constitute a more comprehensive source of information review.

Subjective ratings.

Results of the subjective measures from previous studies in the series have been inconsistent, bringing into question the utility of these particular dependent variables. Nonetheless, they were again included. A complexity type by note type interaction was anticipated for all subjective measures. Participants with access to provided notes were expected to return significantly higher verdict confidence, lower verdict difficulty and lower law difficulty ratings than participants who took their own notes. For participants in the legal complexity condition (regardless of note type), overall verdict confidence ratings were expected to be significantly lower, and overall verdict difficulty and law difficulty ratings were expected to be higher than those of participants in the remaining complexity conditions, due to the inclusion of an additional charge and subsequent additional verdict for these participants. This effect was predicted to be attenuated by the presence of provided notes, so the discrepancy between the verdict confidence, verdict difficulty and law difficulty scores of participants in the legal complexity condition and those exposed to the other complexity types was expected to be smaller for participants with provided notes than for participants making their own notes.

Utility ratings.

The contents of both the control and length complexity trials contained the type of information considered most accessible to the jurors, whereas the more scientific and legal nature of the evidence and legal complexity trials respectively meant that the information contained within them was presumably more unfamiliar and complex. Regardless of whether jurors' notes objectively reflected this difference, it was hypothesised that participants would perceive their own notes to be of greater utility under the former conditions than the latter ones (Bartlett, 1932), so the own notes utility ratings of participants in the control and length complexity conditions were expected to be significantly higher than those of participants in the evidence and legal complexity conditions.

Participants were expected to appreciate the resources contained within the provided notes regardless of the complexity type they were exposed to, so participants' perceptions of the provided notes' utility and the subsequent ratings were not expected to differ by complexity type. However, as in previous experiments in this series, some components of the provided notes were expected to receive significantly higher utility ratings than others, and a main effect for component was therefore anticipated. More specifically, in line with the previous studies, it was predicted that verdict flowcharts would receive significantly lower utility ratings than each of the other provided notes components.

4.5 Method

Participants.

A total of 120 jury-eligible participants (39 males and 81 females, with a mean age of 24.2 years) completed the experiment. Participants were first, second and third year psychology students studying at the Hobart and Launceston campuses

of the University of Tasmania, who completed the experiment as part of their course requirements. All participants watched the trial DVD on a large screen in a classroom.

Design.

This experiment employed a 4[complexity type: control, length, legal and evidence] x 2[note type: own or provided] factorial design. The dependent variables measured were the same as those assessed in the previous studies, with the addition of a further three measures. Participant comprehension of information presented in the evidence complexity condition and in the legal complexity condition was measured by six multiple-choice questions for each. Participants' ability to apply the specific law presented in the legal complexity condition was assessed using five scenarios with multiple-choice verdicts.

Materials.

In order to accommodate the complexity manipulation, some changes were made to the materials used in this experiment.

Mock criminal trial.

Participants in this experiment viewed one of four different versions of the mock criminal trial. The trial which was developed for use in Experiments 1, 2 and 3 served as the control complexity version of the trial, and formed the basis from which the three additional versions were developed. The extra material required for creation of the different versions of the trial was filmed at the same time as the original trial, to ensure consistent appearance of all individuals and settings.

To create the length complexity version of the trial, testimony of three extra witnesses was created. To ensure the supplementary material introduced by these

witnesses did not increase ambiguity or complexity of evidence, the additional witnesses merely elaborated on evidence which had already been submitted and did not contribute any extra information of great significance. The additional testimony added an extra 18 minutes to the trial length, taking the length complexity version out to 73 minutes duration. (See Appendix L for a copy of the length complexity trial DVD).

The evidence complexity version was created by adding several more complex explanations of medical phenomena throughout the testimony of medical experts. Testimony of an extra expert medical witness, who provided detailed information regarding the origin, pathology and subtypes of Motor Neuron Disease, was also added. Aside from using a number of complicated medical and scientific terms and explanations, this extra witness presented evidence which contradicted that of other medical experts, thus introducing an element of ambiguity and confusion with regard to the scientific evidence. The evidence complexity version was 65 minutes long. (See Appendix M for a copy of the evidence complexity trial DVD).

Legal complexity was generated via the introduction of an additional charge. In the control trial, as well as the evidence and length complexity versions, the accused was charged on two counts: murder, and the alternative charge of instigating or aiding suicide. For the legal complexity trial however, participants were given a choice between convicting the accused of murder, of manslaughter, or of instigating or aiding suicide. The additional charge of manslaughter is generally considered to be a very complex charge which is particularly difficult to understand, as it contains several terms which have ambiguous legal definitions, and requires jury members to apply both a subjective and an objective test, looking at the accused's actual knowledge and intention, as well as considering what a reasonable person in the accused's position ought to have known (Blackwood & Warner, 2006). The essence

of the trial content remained, but the cause of death was altered for compatibility with a manslaughter charge. The legal complexity version was 59 minutes. (See Appendix N for a copy of the legal complexity trial DVD).

Ideally, it was important to ensure that the duration of the control, evidence and legal complexity versions of the trial remained as similar as possible, to maintain the impact of the length complexity version, however it was very difficult to introduce these additional complexity types without adding to the duration of the control trial; the legal complexity version was an extra 4 minutes in length, while the evidence complexity version was an extra 10 minutes in length.

Once again, all modifications to the original trial were done in consultation with the same two legal academics, and each version of the script was further reviewed by two currently practising criminal lawyers, to ensure legal accuracy and plausibility. Both the legal academics and the practicing lawyers agreed that the additional versions of the trial script were accurate and realistic.

Questionnaire.

Participants completed the same questionnaire as in Experiments 1, 2 and 3, with the addition of three extra measures. To test participants' comprehension of the additional material presented in both the evidence and legal complexity trials, six multiple-choice questions were developed for each, resulting in an extra 12 questions. Participants' ability to apply the specific legal material they were exposed to in the legal complexity condition (in essence, their understanding of the manslaughter charge) was tested by the creation of a further five short scenarios with multiple-choice verdicts. The legal complexity questions and scenarios were developed by the experimenter, in consultation with the previously mentioned legal academics, as well as an additional professor of law with 37 years of experience.

The six evidence complexity and six legal complexity questions were combined to create an extra section of the questionnaire (Part B), and the five scenarios were also put in a new section (Part D). Part E of the questionnaire consisted of the same rating scales as those completed in Experiments 1, 2 and 3. Because all participants were required to complete the additional sections (Parts B and D), regardless of whether they had been exposed to the relevant material, these sections were prefaced by instruction sets indicating that even if participants were not familiar with the material assessed in the questions, they should still answer every question. (See Appendix O for a copy of the additional sections of the questionnaire).

Provided notes.

Participants in the control, evidence and length complexity conditions received the same set of provided notes as those used in Experiments 1, 2 and 3. The only change made to the materials involved the alteration of the trial transcripts to reflect the content of the relevant complexity version the participants were exposed to (See Appendix P for evidence and length complexity transcripts). In addition to alterations made to the transcript, participants in the legal complexity condition also received judicial instructions, offence criteria and verdict flowcharts which were altered to include information regarding the extra manslaughter charge (see Appendix Q for legal complexity provided notes, including transcript). The additional materials regarding the manslaughter charge were again developed with the assistance of the same two legal academics to ensure that the information contained in these additional aids was consistent with the Tasmanian Criminal Code Act (1924) and current judicial opinion.

Procedure.

The random allocation to conditions and explanations regarding the trial and the participants' task were the same as those in Experiment 1, as were the instructions for participants assigned to the own notes conditions and provided notes conditions (See Appendix R for standardised participant instructions). Participants then watched the appropriate version of the mock criminal trial DVD. Following this, all participants were given 5 minutes to either familiarise themselves with the provided notes, or review their own notes, before completing the questionnaire. Participants had access to the relevant note type while they completed the questionnaire, and were urged to utilise the notes to assist them in selecting the correct answers.

4.6 Results

From the questionnaire responses, total fact and law scores were calculated for each participant, by awarding correctly answered items one point, and incorrect responses zero points. Objective measures of comprehension were again analysed separately from participants' subjective ratings.

Objective measures of comprehension.

A MANOVA was conducted as the initial analysis, with complexity type and note type as between subjects factors. This revealed a significant main effect for complexity type, Wilk's $\Lambda = .86$, $F(9, 267.9) = 1.93$, $p < .05$, $\eta^2_p = .05$ and a significant main effect for note type, Wilk's $\Lambda = .33$, $F(3, 110) = 73.41$, $p < .001$, $\eta^2_p = .67$. The Complexity Type x Note Type interaction was nonsignificant, Wilk's $\Lambda =$

.90, $F(9, 267.9) = 1.29$, $p = .25$. The subsequent univariate ANOVAs for each dependent variable will be discussed in turn.[9]

Fact score.

Although the Complexity Type x Note Type interaction was nonsignificant, $F(3, 112) = 1.63$, $p = .49$, the ANOVA revealed a significant main effect for note type, $F(1, 112) = 210.22$, $p < .001$, $\eta^2_p = .65$, such that participants with provided notes achieved significantly higher fact scores ($M = 13.17$, $SD = 1.58$) than participants who took their own notes ($M = 8.47$, $SD = 2.10$). The main effect for complexity type was also significant, $F(3, 112) = 4.11$, $p < .01$, $\eta^2_p = .10$. Bonferroni adjusted pairwise comparisons indicated that participants in the length complexity conditions achieved significantly lower fact scores than those in the control ($p < .05$), evidence ($p < .05$) and legal complexity conditions ($p < .05$). There were no significant differences in the fact scores for participants in the control, evidence and legal complexity conditions ($p > .05$). See Table 17 for mean fact scores.

Table 17

Mean Fact Scores for Each Complexity Condition

Complexity Type	*M*	*SD*	*n*
Control	11.13	2.78	30
Evidence	11.10	2.93	30
Legal	11.20	2.62	30
Length	9.83	3.52	30

[9] As discussed previously, results for the scenario score measure will no longer be reported, but the analyses are included in Appendix S.

Law score.

Although the Complexity Type x Note Type interaction was nonsignificant, $F(3, 112) = 0.88$, $p = .45$, the ANOVA revealed a significant main effect for note type, $F(1, 112) = 5.51$, $p < .05$, $\eta^2_p = .05$, such that participants who were provided with notes achieved significantly higher law scores ($M = 9.12$, $SD = 3.41$) than participants who took their own notes ($M = 7.78$, $SD = 2.81$). The main effect for complexity type was nonsignificant, $F(1, 112) = 1.41$, $p = .24$.

Manipulation checks.

Three additional dependent variables were measured in this experiment (evidence score, manslaughter score and manslaughter scenario score), to specifically assess the material participants were exposed to as part of the complexity manipulation. Since all participants completed these questions, regardless of whether they had been exposed to the relevant complexity material, these dependent variables also acted as manipulation checks. For this reason, they were analysed separately from the other objective measures of comprehension. A MANOVA was conducted as the initial analysis, again with complexity type and note type as between subjects factors. This revealed a significant main effect for complexity type, Wilk's $\Lambda = .66$, $F(9, 267.9) = 5.51$, $p < .001$, $\eta^2_p = .13$. The main effect for note type, and the Complexity Type x Note Type interaction were both nonsignificant, Wilk's $\Lambda = .98$, $F(3, 110) = 0.94$, $p = .43$ and Wilk's $\Lambda = .88$, $F(9, 267.9) = 1.60$, $p = .12$, respectively. The subsequent univariate ANOVAs for each dependent variable will be discussed in turn.

Evidence score.

The ANOVA revealed a significant main effect for complexity type, $F(3, 112) = 13.40$, $p < .001$, $\eta^2_p = .26$. See Table 18 for mean evidence scores.

Table 18

Mean Evidence Scores for Each Complexity Condition

Complexity Type	*M*	*SD*	*n*
Control	1.53	0.90	30
Evidence	3.07	1.82	30
Legal	1.50	0.97	30
Length	1.30	1.15	30

Bonferroni adjusted pairwise comparisons indicated that participants in the evidence complexity condition achieved significantly higher evidence scores than participants in the control ($p < .001$), legal ($p < .001$) and length ($p < .001$) complexity conditions. There were no significant differences between the evidence scores of participants in the control, legal and length complexity conditions ($p > .05$). The Complexity Type x Note Type interaction was also significant at the univariate level, $F(3, 112) = 3.54$, $p < .05$, $\eta^2_p = .09$, as shown in Figure 6.

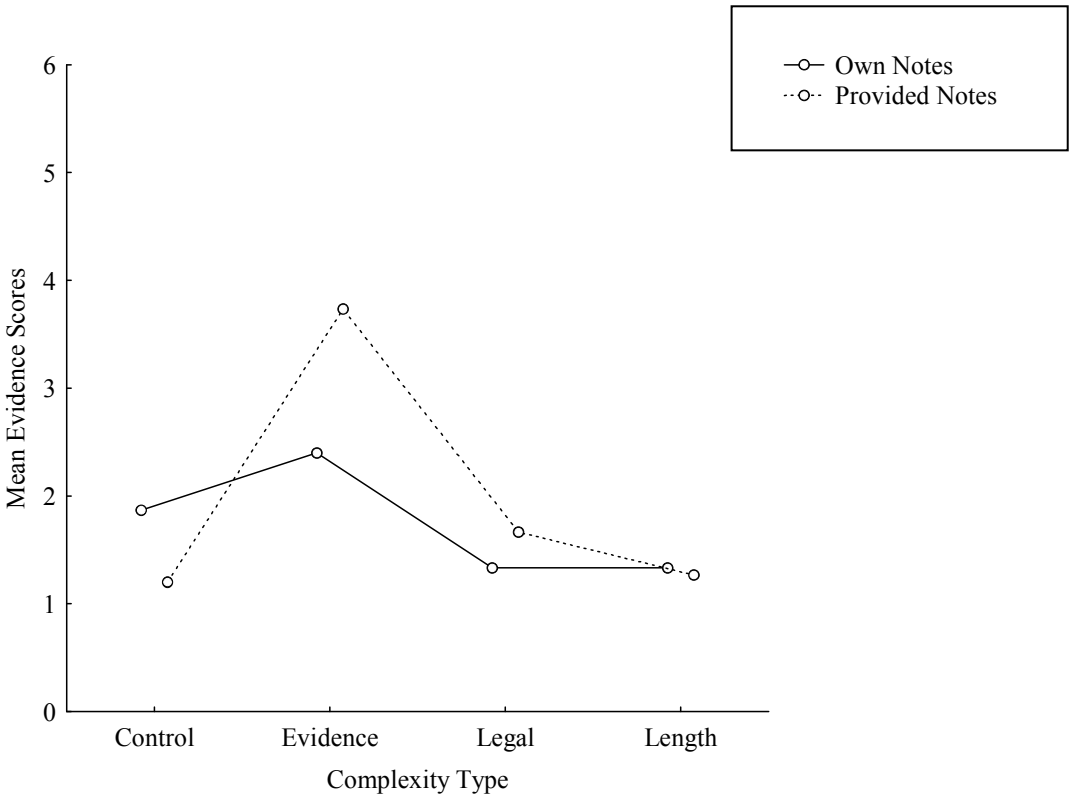

Figure 6. Mean evidence scores for participants with own and provided notes in each of the complexity conditions. Points are offset horizontally for clarity.

Since the multivariate test for this effect was nonsignificant, this result must be treated with caution (Tabachnick & Fidell, 2006). The breakdown analysis performed with a Bonferroni corrected alpha of .025 revealed that within the evidence complexity condition, participants with access to provided notes achieved significantly higher evidence scores than those with their own notes, $F(1, 112) = 8.91$, $p < .025$. For participants in the control, legal and length complexity conditions, evidence score did not differ significantly based on note type, $F(1, 112) = 2.23$, $p = .14$, $F(1, 112) = 0.56$, $p = .46$, and $F(1, 112) = 0.02$, $p = .88$, respectively.

Manslaughter score.

The ANOVA returned no significant results for manslaughter score. The main effect for complexity type was nonsignificant, $F(3, 112) = 1.43$, $p = .24$,

indicating that there were no significant differences between the manslaughter scores of participants in the control, legal, evidence and length complexity conditions. The main effect for note type and the Complexity Type x Note Type interaction were also nonsignificant, $F(1, 112) = 1.32$, $p = .25$ and $F(3, 112) = 0.40$, $p = .76$, respectively.

Manslaughter scenario score.

The ANOVA returned no significant results for the manslaughter scenario score. The main effect for complexity type was nonsignificant, $F(3, 112) = 2.49$, $p = .06$, indicating that there were no significant differences between the manslaughter scenario scores of participants in the control, legal, evidence and length complexity conditions. The main effect for note type and the Complexity Type x Note Type interaction were also nonsignificant, $F(1, 112) = 0.88$, $p = .35$ and $F(3, 112) = 1.15$, $p = .33$, respectively.

Subjective ratings.

Participants' subjective ratings were analysed separately from the objective measures of participant comprehension: a MANOVA was conducted, with complexity type and note type as between subjects factors. This revealed a significant main effect for note type, Wilk's $\Lambda = .91$, $F(3, 110) = 3.50$, $p < .05$, $\eta^2_p = .09$. The main effect for complexity type was nonsignificant, Wilk's $\Lambda = .87$, $F(9, 267.9) = 1.76$, $p = .08$, as was the Complexity Type x Note Type interaction, Wilk's $\Lambda = .91$, $F(9, 267.9) = 1.22$, $p = .28$. The subsequent univariate ANOVAs for each dependent variable will be discussed in turn.

Verdict confidence.

The ANOVA revealed no significant results for verdict confidence, including the Complexity Type x Note Type interaction, $F(3, 112) = 0.65$, $p = .59$.

Verdict difficulty.

The ANOVA revealed a significant main effect for complexity type, $F(3, 112) = 3.17$, $p < .05$, $\eta^2_p = .08$. See Table 19 for mean ratings of verdict difficulty.

Table 19

Mean Verdict Difficulty Ratings for Each Complexity Condition

Complexity Type	*M*	*SD*	*n*
Control	4.63	1.65	30
Evidence	3.83	1.39	30
Legal	3.40	1.87	30
Length	3.80	1.56	30

Bonferroni corrected pairwise comparisons indicated that participants in the control complexity condition rated arriving at a verdict as being significantly more difficult than participants in the legal complexity condition ($p < .05$). There were no significant differences between the verdict difficulty ratings of participants in the evidence, legal and length complexity conditions ($p > .05$). The equivalent multivariate test, however, was nonsignificant, so these results must be interpreted with caution (Tabachnick & Fidell, 2006). The Complexity Type x Note Type interaction was also significant, $F(3, 112) = 2.88$, $p < .05$, $\eta^2_p = .07$, however since the multivariate test for this effect was clearly highly nonsignificant, this interaction will not be interpreted.

Law difficulty.

Although the Complexity Type x Note Type interaction was nonsignificant, $F(3, 112) = 0.94$, $p = .43$, the ANOVA revealed a significant main effect for note type, $F(1, 112) = 10.67$, $p < .01$, $\eta^2_p = .09$, such that participants who took their own

notes rated the law as being significantly more difficult to understand (M = 4.05, SD = 1.38) than participants who were provided with notes (M = 3.25, SD = 1.27).

Utility ratings.

Own notes.

Participants rated the utility of their own notes on a single 7-point rating scale. A univariate ANOVA was run with complexity type as a between subjects factor. The main effect for complexity type was nonsignificant, $F(3, 56) = 0.87$, $p = .46$. Overall, participants rated their own notes as being moderately useful (M = 3.98, SD = 1.66). For participants in the own notes conditions, the number of pages of notes taken was recorded. A between subjects ANOVA revealed that there were no significant differences in the number of pages of notes taken by participants in each of the complexity conditions, $F(3, 56) = 1.67$, $p = .18$. Overall, participants took a mean of 4.05 pages of notes (SD = 2.61).

Provided notes.

A repeated measures ANOVA was conducted, with complexity type as a between groups factor and component as a within groups variable. Greenhouse Geisser corrections were used where appropriate. The main effect for component was significant, $F(3.6, 198.7) = 25.88$, $p < .001$, $\eta^2_p = .32$, and the mean utility ratings are displayed in Table 20, but the Component x Complexity Type interaction was nonsignificant, $F(10.7, 198.7) = 0.90$, $p = .54$, as was the main effect for complexity type, $F(3, 56) = 1.31$, $p = .28$.

Table 20

Mean Utility Ratings for Each Provided Notes Component

Component	*M*	*SD*	*n*
Transcript	5.66	1.35	60
Chronology	5.73	1.39	60
Offence Criteria	5.39	1.56	60
Flowcharts	3.61	1.90	60
Instructions	5.08	1.58	60

Bonferroni adjusted pairwise comparisons indicated that the transcript ($p < .001$), chronology of events ($p < .001$), offence criteria ($p < .001$) and the judicial instructions ($p < .001$) received significantly higher utility ratings than the flowcharts. There were no significant differences between the utility ratings of the transcript, chronology, offence criteria or judicial instructions ($p > .05$).

Own notes versus provided notes.

Participants provided a single rating of the global utility of their own notes, but there was still no global utility rating for provided notes. So, to determine whether provided notes received overall higher mean utility ratings than own notes, utility ratings for the five provided notes components were averaged into a global measure of utility. An independent samples *t*-test compared these global ratings of utility, revealing that provided notes received significantly higher utility ratings ($M = 5.09$, $SD = 1.04$) than own notes ($M = 3.98$, $SD = 1.66$), $t(98.8) = -4.39$, $p < .001$, equal variances not assumed.

Verdicts.

Frequencies and percentages of participants choosing guilty and not guilty verdicts were calculated for both the murder charge and the suicide charge, and are displayed in Table 21.

Table 21

Frequencies and Percentages of Murder and Suicide Charge Verdicts

		Complexity Type							
		Control		Evidence		Legal		Length	
		Own	Provided	Own	Provided	Own	Provided	Own	Provided
Murder Verdict	Guilty	0 (0%)	2 (13.3%)	1 (6.7%)	0 (0%)	1 (6.7%)	0 (0%)	1 (6.7%)	2 (13.3%)
	Not Guilty	15 (100%)	13 (86.7%)	14 (93.3%)	15 (100%)	14 (93.3%)	15 (100%)	14 (93.3%)	13 (86.7%)
Suicide Verdict	Guilty	4 (26.7%)	7 (46.7%)	4 (26.7%)	5 (33.3%)	6 (40%)	2 (13.3%)	7 (46.7%)	6 (40%)
	Not Guilty	11 (73.3%)	8 (53.3%)	11 (73.3%)	10 (66.7%)	9 (60%)	13 (86.7%)	8 (53.3%)	9 (60%)

The cell counts of two or less for guilty verdicts on the murder charge were insufficient for further analyses to be performed (Howell, 2010), but a chi-square test was conducted for the suicide charge, to determine if the frequency of guilty and not guilty verdicts differed significantly between note type groups. This revealed no significant differences: the likelihood of arriving at a guilty verdict did not differ between participants who had their own notes and participants who had provided notes in the control complexity condition, $\chi^2(1, N = 30) = 1.29$, $p = .26$, the evidence complexity condition, $\chi^2(1, N = 30) = 0.16$, $p = .69$, the legal complexity condition,

$\chi^2(1, N = 30) = 2.73$, $p = .10$, or the length complexity condition, $\chi^2(1, N = 30) = 0.14$, $p = .71$.

Another chi-square test was conducted for the suicide charge, to determine if the frequency of guilty and not guilty verdicts differed significantly between complexity type conditions. This too revealed no significant differences: the likelihood of arriving at a guilty verdict did not differ between the control, evidence, legal or length complexity conditions for participants who took their own notes, $\chi^2(3, N = 60) = 1.98$, $p = .58$, or for participants who had provided notes, $\chi^2(3, N = 60) = 4.20$, $p = .24$.

Finally, participants in the legal complexity condition were also required to return a verdict on the additional charge of manslaughter. Frequencies and percentages of participants choosing guilty and not guilty verdicts were calculated for the manslaughter charge, and are displayed in Table 22.

Table 22

Frequencies and Percentages of Manslaughter Charge Verdicts

Manslaughter Verdict	Note Type	
	Own	Provided
Guilty	0 (0%)	1 (6.7%)
Not Guilty	15 (100%)	14 (93.3%)

Cell counts for guilty verdicts were insufficient for further analyses to be performed on the manslaughter verdict frequencies (Howell, 2010).

4.7 Discussion

Objective measures.

Fact score.

A complexity type by note type interaction was anticipated for this dependent variable, but the results indicated only significant main effects for note type and complexity type. As anticipated, participants with provided notes achieved significantly higher fact scores than participants who took their own notes, and participants in the length complexity conditions achieved significantly lower fact scores than those in the control, evidence and legal complexity conditions, with no significant differences between the latter three groups. The failure to record a significant interaction was contrary to expectations, and suggests that the utility of the two note types was not differentially affected by the complexity types participants were exposed to. The prediction that the provided notes would simply add to the information load for participants in the length complexity conditions, thus decreasing their ability to improve comprehension levels when compared to own notes, was not supported by the results; participants in the length complexity condition achieved significantly lower fact scores than those in the remaining complexity conditions, but this result was true for both note types.

Law score.

A complexity type by note type interaction was once again anticipated, but the results for this dependent variable revealed only a main effect for note type. As predicted, participants provided with notes achieved significantly higher law scores than participants who took their own notes, however the main effect for complexity type and the complexity type by note type interaction were both nonsignificant.

Once again, the absence of an interaction suggests that the relative advantage conferred by both note types remained constant across the complexity conditions. It was also predicted that participants in the legal complexity condition would achieve significantly lower law scores overall than participants in the other complexity conditions, due to the interference caused by the additional legal content these participants were exposed to, but this prediction was not borne out.

Direct comparisons between the results of the current experiment, and the findings of previous research in the area of complexity are difficult, because none of these preceding studies have simultaneously manipulated the same variables; researchers have generally looked at a single kind of jury-aid, and compared its efficacy within differing degrees of the same dimension of complexity (e.g., Bourgeois et al., 1993), and those that have manipulated both complexity type and jury-aids have utilised self-report measures rather than objective assessments of performance (e.g., Heuer & Penrod, 1994).

The impact of increased information load has been investigated by Horowitz et al. (1996). Although the information load manipulation of the current experiment is not a direct replication of that utilised by Horowitz et al., and Horowitz et al.'s study did not examine how a jury-aid might influence jurors' ability to manage increased information load, some similarities in the results can be noted. Namely, Horowitz et al. established that high information load led to suboptimal processing of information, as demonstrated by jurors' misinterpretation of the evidence. The current study assessed juror comprehension more directly via a multiple-choice questionnaire, but also established that participants exposed to greater information load in the length complexity condition achieved significantly lower scores than participants in other complexity conditions. However, this result only held for participants' performance on the fact score measure; there were no significant

differences between the performance of participants exposed to varying complexity conditions on the law score measure. In this particular experiment, the length complexity version of the trial only included additional factual information while the legal concepts participants were exposed to remained constant. This may explain the absence of the same significant result on the law score measure.

ForsterLee and Horowitz (1997) concluded that notetaking was beneficial when jurors confronted a task of moderate difficulty, but provided little advantage for jurors facing more ambiguous evidence. Although the current experiment has also identified a particular complexity condition for which participants' own notes seem less useful, it is unclear whether this complexity condition (length complexity) is directly comparable to the "more ambiguous" task designed by ForsterLee and Horowitz (1997). Once again, this result only applies to participants' performance on the fact score measure, and not the law score measure, where there was no difference in performance across the complexity types.

Horowitz and Bordens (2002) found that notetaking helped to mitigate biases towards overvaluing the claims of multiple plaintiffs, but only where jurors were exposed to a high information load version of the trial. So, while Horowitz and Bordens identified the benefits of notetaking as occurring under high information load conditions, the current experiment found that when answering questions relating to the facts of the case, notetaking participants achieved significantly lower scores when exposed to a high information load (length complexity) than when exposed to other complexity types. However, it should be noted that the current experiment manipulated information load and assessed participant performance differently, and compared notetaking participants to those accessing a different jury-aid rather than to non-notetaking participants. With these methodological differences in mind, both the validity and value of this discrepancy analysis is limited.

Bourgeois et al. (1993) were the only researchers to subject a jury-aid other than jurors' own notes to objective empirical analysis while manipulating degree of a particular type of complexity. While jurors exposed to a low evidence complexity version of a trial engaged in systematic processing regardless of whether they had transcript access or not, Bourgeois et al. (1993) established that for jurors exposed to the high evidence complexity version, systematic processing of the evidence was only possible when transcript access was allowed. However, on a test of recognition, no significant main effects or interactions relating to degree of complexity or transcript access were recorded. On the other hand, the results of the current experiment suggest that access to a court-prepared jury-aid does improve performance on a comprehension measure for jurors exposed to evidence complexity, but once again, the dimensions of comparison between the two studies are not similar enough for this kind of assessment to be meaningful.

Perhaps the most important result delivered by the current experiment is that the relative utility of the two jury-aids being examined did not differ according to complexity type. Either these differences do not exist, or the current study methods are insensitive to these differences. No previous studies have conducted a similar assessment for these results to be compared with, but relevant research has at least established a differential influence of complexity type and degree on the utility of particular aids (Heuer & Penrod, 1994), and the findings of the current experiment do not seem consistent with this. It is possible that the results of the current study may be replicated, and confirm that indeed with regard to type of complexity, unlike degree of complexity, the utility of provided notes in enhancing juror comprehension is not differentially impacted (when objective measures of performance are employed). In that case, perhaps a more specific investigation of each of the components of the provided notes and their relative utility for varying complexity

types would be a more valuable research direction to pursue. On the other hand, methodological limitations may be partly responsible for the outcome of the current experiment.

Methodological limitations relating to trial complexity manipulations.

It has already been established that trial complexity is a difficult construct; it has been conceptualised in a number of different ways, and varying dimensions have been proposed (Lempert, 1981; MacCoun, 1987). There is still no agreement on its definitions and dimensions. In addition, as a construct which cannot truly be objectively measured, consistently manipulating degree and type of complexity within an experimental paradigm is a difficult task. Defining complexity type, and introducing differences between trials to manipulate this while holding all other characteristics of the trial constant is a challenging task. Determining whether the vigour of the complexity type manipulation is comparable is even more so, and this highlights one of the greatest difficulties with this kind of research. Since complexity cannot be objectively quantified, it cannot be guaranteed that participants in each complexity condition in the current experiment were being exposed to the same *degree* of complexity within the different types. Admittedly, determining equivalence of degree of complexity across the different complexity types was not the ultimate aim of this experiment, and it could perhaps even be argued that attempting to achieve such equivalence would be an impossible undertaking, considering the very nature of different complexity types.

Evidently, this issue of lack of equivalence would be of greater concern, had the current experiment actually demonstrated some differential utility of the two note types across the complexity conditions. Since this did not occur, this issue is raised not so much as a factor which may influence the validity or interpretation of the

current results, but more as a challenge for future research in the area of trial complexity and its impact on various proposed jury-aids.

An additional methodological difficulty relating to the complexity type manipulation is the low level of ecological validity which can reasonably be achieved in this type of experiment. Poor ecological validity is one of the greatest criticisms levelled at jury simulation studies (Weiten & Diamond, 1979), and will thus be covered extensively in the general discussion of this series of experiments, but this is especially relevant with regard to the length complexity condition in the current experiment. While the complexity manipulation may have been successful in a comparative sense, in absolute terms it is questionable whether the different trial versions truly represented a realistic reflection of the chosen complexity dimensions. In particular, the concept of length complexity refers to especially lengthy trials that include large quantities of information, and it must be acknowledged that a trial which is an additional 18 minutes in length may not accurately reflect the kind of complexity defined by this identified dimension. In reality, the difference between a lengthy and nonlengthy trial would be a matter of hours, or even days, not a matter of minutes (trial length in Heuer & Penrod's 1994 field study, upon which the current dimensions of complexity are based, ranged from one to greater than 30 days). These sorts of concerns should inform future research, though it is difficult to conceptualise how this particular complexity dimension could be accurately reproduced using a simulation study due to the obvious practical constraints, again highlighting the importance of methodological diversity in this area of research.

Manipulation checks.

A complexity type by note type interaction was predicted for the evidence score dependent variable. Results revealed a main effect for complexity type, and a

significant complexity type by note type interaction (as established by the univariate ANOVA only). As anticipated, participants in the evidence complexity condition achieved significantly higher evidence scores than participants in the control, legal and length complexity conditions, and there were no significant differences between the evidence scores of participants in these latter three conditions. This result confirms that the evidence complexity manipulation was effective, such that only participants who were exposed to the information were able to successfully answer questions regarding this material. The univariate interaction was significant in the predicted direction, such that within the evidence complexity condition only, participants with provided notes achieved significantly higher evidence scores than participants with their own notes, however since the corresponding multivariate result was nonsignificant, this result must be interpreted with caution. It is possible that the small number of questions comprising this dependent variable made a significant multivariate result more difficult to achieve.

A complexity type by note type interaction was again predicted for the manslaughter score dependent variable, such that manslaughter scores for participants in the legal complexity condition would be significantly higher than those for participants in the control, evidence and length complexity conditions. Despite the fact that participants in the legal complexity condition were the only participants exposed to the material tested in the manslaughter questions, no significant results were returned for manslaughter score. This is clearly contrary to expectations, and casts some doubt over the efficacy of the legal complexity manipulation.

There are a number of explanations to consider. Firstly, it is possible that participants in the other complexity conditions had a basic lay understanding of the charge of manslaughter; it is probably fair to assume that some understanding of

manslaughter exists in common knowledge (Ellsworth, 1989), as individuals become familiar with the concept through exposure to such trials in the media (the same could not be said of the material tested in the evidence score measure, as this constituted specific medical information regarding the subtypes of Motor Neuron Disease and drugs used to treat it). This prior knowledge may have allowed participants in the non-legal complexity conditions to achieve better than chance manslaughter scores, thus explaining the lack of significant difference between the groups.

On the other hand, it is possible that the legal concepts underlying the charge of manslaughter were so difficult to understand, that participants who were exposed to the relevant information were unable to appreciably outperform participants who were not. The highest mean manslaughter score was 2.4 out of a possible 6, indeed suggesting that comprehension of manslaughter related matters was limited. Considering that the complexity type by note type interaction was nonsignificant, it would seem that even the comprehensive information contained within the provided notes was not sufficient to improve participants' comprehension of the concept of manslaughter and enhance their ability to correctly answer questions covering manslaughter-related material.

Since this result is obtained based on the results of six multiple-choice questions only, caution must be exercised in arriving at any definitive conclusions, however it could be suggested that the failure to record a significant outcome on the manslaughter score measure implies that there may be some material which is so difficult for jurors to understand that detailed comprehension aids like the ones utilised in this experiment are unable to produce any measurable improvement in performance.

As above, a complexity type by note type interaction was predicted for the manslaughter scenario score measure, since completion of these novel scenarios required knowledge about legal concepts related to manslaughter, which only participants in the legal complexity condition had any exposure to. As above, no significant results were returned. Once again, this result is contrary to expectations, and raises important issues regarding the legal complexity manipulation. Similar reasons to those discussed above are again proposed as possible explanations for this unexpected result. In this case, it should also be noted that this dependent variable constitutes another scenario-type measure. Considering the difficulties associated with this style of measure throughout this series of experiments, it is indeed possible that the current scenario measure was beleaguered by similar problems.

Subjective ratings.

A complexity type by note type interaction was anticipated for verdict confidence, but no significant results were recorded. Contrary to expectations, participants with access to provided notes did not return significantly higher verdict confidence ratings than participants who took their own notes, and verdict confidence ratings were not lower for participants in the legal complexity condition due to the inclusion of the additional charge and verdict. The experimental manipulations did not seem to have an appreciable impact on participants' perceptions of their verdict confidence.

A complexity type by note type interaction was also predicted for verdict difficulty, but results instead indicated a main effect for complexity type. Participants in the control complexity condition rated arriving at a verdict as being significantly more difficult than participants in the legal complexity condition, and there were no significant differences between the verdict difficulty ratings of

participants in the remaining complexity conditions. Although verdict difficulty ratings were expected to differ according to complexity condition, these ratings were anticipated to be significantly higher for participants in the legal complexity condition due to the inclusion of the additional charge and subsequent verdict, and the result is in quite the opposite direction. Of course, this result must be interpreted with caution as the corresponding multivariate test was nonsignificant. In addition, and once again contrary to expectations, participants' perceptions of verdict difficulty did not seem to be influenced by note type.

A complexity type by note type interaction was anticipated for law difficulty, but only a significant main effect for note type was recorded. As predicted, participants who took their own notes rated the law as being significantly more difficult to understand than participants who were provided with notes. Participants in the legal complexity condition were expected to return higher ratings of law difficulty than those in the remaining complexity conditions, but this hypothesis was not supported.

As discussed in Experiment 3, the subjective measures have been problematic throughout this series of studies, failing to follow a consistent pattern. The results of these measures in the current experiment are no exception, and considering the lack of consistency in the direction of these results, it is probably counterproductive to spend a large proportion of this discussion offering possible explanations for this. Once again, the failure to receive anything other than minimal support for the hypotheses relating to the subjective measures suggests either that participants' subjective experience of the mock trial and related tasks is not uniformly influenced by the variables manipulated, or else identifies something inherently problematic in the measures themselves.

It must be noted, however, that Heuer and Penrod's (1994) field study investigating trial complexity was based entirely on the subjective reports of jurors, who used 9-point scales to address issues including their satisfaction with the trial outcome, how difficult it was to reach a verdict and how difficult it was to understand the law. Principal components analyses were conducted to reduce redundant variables and simplify analyses, but these subjective ratings formed the basis of many significant results. It is unclear why similar success was not achieved with the subjective ratings in the current series of experiments. The significant results observed for the objective measures indicates that the experimental manipulations had a measurable influence on participants' performance; it is hard to explain why the same manipulations do not seem to have any appreciable impact on participants' perceptions of their performance or evaluation of their experience. Perhaps this is a function of the difference between field trials and laboratory experiments.

Utility ratings.

A main effect for complexity type was predicted but not found for utility ratings of own notes. Utility ratings of participants in the control and length complexity conditions were expected to be significantly higher than those of participants in the evidence and legal complexity conditions, due to the presumably more accessible nature of the information presented in those trials, but complexity type apparently had no detectable impact on participants' perceptions of the utility of their own notes.

As expected, participants' appreciation of the resources contained within the provided notes did not differ according to the complexity type they were exposed to, but the significant main effect for component confirmed that some components of the

provided notes received significantly higher utility ratings than others. In line with the predictions and previous results, the transcript, chronology of events, offence criteria, and judicial instructions received significantly higher utility ratings than the flowcharts, with no significant differences recorded between the utility ratings of the former components.

Since the comparison of utility of own and provided notes was not a premeditated one, no hypotheses were listed, but significantly higher utility ratings for the provided notes than for participants' own notes were recorded.

Verdicts.

The complexities concerning this particular dependent variable were discussed in Experiment 1. Once again, no predictions were made regarding this variable, and results revealed that the likelihood of arriving at a particular verdict did not differ according to note type or complexity type for any of the charges.

Implications.

The issue of trial complexity raises some interesting questions for the real-life application of the results obtained through mock trial experiments. Although studies examining the impact of varying types and degrees of complexity on different jury-aids provide useful information about conditions under which the utility of these aids may be enhanced or compromised, researchers using an experimental paradigm have the advantage of being able to manipulate complexity by scripting the trial participants are exposed to. In order to use the information obtained from such experiments effectively, court personnel would need sufficient knowledge of the likely content of an upcoming trial in order to select the most appropriate type or combination of jury-aids. Although they would not be able to do this with the same degree of certainty as researchers in these experiments, perhaps this is not as

unrealistic as it may first sound; the legal professionals involved in a court case should have a reasonable idea of the issues likely to be covered and the areas of probable complexity. Also, many of the jury-aids in question would not be provided to jurors until after presentation of all the evidence, thus enabling a post-trial assessment of complexity type(s), and subsequent decisions about the most appropriate aids to provide.

It could also be argued that real trials may not fit as neatly into the distinct complexity categories defined and examined within the current study. Each type of complexity may be present to varying degrees within a single trial, which would further complicate the selection of appropriate jury-aids. To obtain a full appreciation of the effects of trial complexity on particular jury-aids, this area of research could be extended to facilitate some understanding of how various dimensions of complexity interact within a single trial (Heuer & Penrod, 1994), and how these in turn, impact the efficacy of various aids to comprehension.

4.8 Conclusions

As the final study in this series, this experiment was designed to investigate another facet of the comparative relationship between own and provided notes. There is widespread agreement that the trials jurors may be exposed to will differ along dimensions of type and degree of complexity (Heuer & Penrod, 1994). When proposing aids to enhance juror comprehension, it is therefore important to determine how the efficacy of such aids may be affected by these differences. This experiment attempted to address the question of whether own or provided notes address various types of trial complexity with differing efficacy. Consistent with the findings of the previous experiments within this series, results again confirmed that regardless of complexity type, participants accessing provided notes performed better on objective

measures of comprehension than participants who took their own notes. Participants in the length complexity condition achieved the lowest fact scores compared to participants in the remaining complexity conditions, but this result did not hold true for the law score measure, where there were no significant differences between participants' performance according to complexity condition. Most importantly, the absence of any significant interactions suggested that the relative efficacy of own and provided notes remained consistent, regardless of complexity type.

Although the pre-existing research in the area of trial complexity provides little suitable for direct comparison, the current results seem inconsistent with the general sentiment of this body of research, and with the logical reasoning underlying this particular research question. Additional research is required to further clarify this issue, however the design and control difficulties inherent in this area of investigation identify this as a challenging prospect, but because it concerns a variable which may affect the potential utility of any proposed jury-aids, one that nonetheless requires attention.

Overall Discussion

5.1 Overview

The four experiments in this series shared the common goal of investigating the comparative utility of two jury-aids; jurors' own notes, and a collection of court-prepared materials labelled provided notes. Each experiment employed a different experimental design, however all four experiments utilised the same jury simulation paradigm. Methodological concerns specific to each experiment have been addressed within the relevant discussion sections where necessary, but it was appropriate to reserve critical consideration of the experimental paradigm itself for a more general forum, since such analysis is relevant to the entire series of studies.

This general discussion also provides a suitable opportunity for an integrated discussion regarding the outcomes of this series of studies, and the subsequent conclusions and implications.

5.2 The Jury Simulation Paradigm

Much criticism has been levelled at the jury simulation paradigm (Bornstein, 1999; Bray & Kerr, 1979; Breau & Brook, 2007), and since greater ecological validity increases both the quality and the persuasiveness of simulation results and increases their practical value, evaluation of the current series of studies in this light is necessary (Diamond, 1997). Weiten and Diamond (1979) identify six problems which constitute important threats to external and ecological validity; inadequate sampling, inadequate trial simulations, lack of deliberation, inappropriate dependent variables, the nature of decisions based on role-playing, and lack of corroborative field data. These ever-present considerations are often possible to reduce, but not always avoid (Diamond, 1997). It must be remembered, however, that when compared to the other evidence available (including judge's empirically untested assumptions about jury behaviour) the simulation study offers a more reliable and valid alternative, despite its weaknesses.

It seems that there can be no single, optimal research paradigm for jury research, and despite some noteworthy methodological concerns, jury simulation research offers definite advantages (Bray & Kerr, 1979). While a field trial has a high degree of realism with directly generalisable results, the cooperation required and ethical concerns, in addition to the small samples and the difficulty interpreting results in light of confounding variables, can be problematic. On the other hand, at the cost of some verisimilitude, simulations allow a small number of focal variables to be examined with a high level of experimental control which can eliminate

extraneous influences (Devine, Clayton, Dunford, Seying, & Pryce, 2001). Access to deliberation, and the ability to replicate constitute other advantages of the simulation paradigm (Weiten and Diamond, 1979).

The purpose of jury simulation research of jury-aids is to identify and evaluate possible reforms for the actual conduct of jury trials, and if these reforms are not seriously considered by policymakers due to concerns regarding methodology, the research we conduct as social scientists is futile (Tanford, 1991). Bearing in mind that the methodological issues relating to the simulation paradigm are not always possible to avoid altogether, Weiten and Diamond's (1979) six problem areas will now be considered in turn in the context of the current series of experiments, and attempts made to maximise ecological validity and minimise the potential impact of these issues detailed.

Inadequate sampling.

The basic aim of adequate sampling is to access a population which is representative, and which will allow results to generalise successfully. For jury simulation studies, there is some concern that use of student populations may be problematic, firstly because decision-making behaviours of students and jurors may differ, and secondly because there may be differences in information retention between students and jurors (Bornstein, 1999; Weiten & Diamond, 1979). Although dissimilarities in decision-making would not be of such concern in this particular series of studies (where verdict outcome was not the main focus), potential differences in information retention are certainly an important issue to consider. It has been argued that notetaking is an acquired skill that requires training or practice (Flango, 1980), and it would therefore be expected that student populations, who are experienced not only in attending lectures and taking notes, but also using notes to

complete exercises or open-book exams, would have a distinct advantage over nonstudent populations in both the notetaking and provided notes conditions. To avoid overestimating the ability of jurors to handle complex trial testimony, record accurate and useful notes, or utilise provided notes, it was therefore important to access a more representative population of jury pool members. This goal was successfully achieved in Experiment 1, where all participants were members of the local community who had been called for jury duty via random selection from the electoral roll. Continued access to this pool of community participants would have been ideal, however the Supreme Court of Tasmania only permitted such access for a limited period of time. This meant that once data collection for Experiment 1 was completed, a return to drawing participants from student populations was necessary.

Nonetheless, utilising both community and student populations within the series of experiments allowed us to determine that at least with regard to the note type manipulation, the results did not differ based on the population from which participants were drawn. This finding is consistent with other researchers, who have also demonstrated that contrary to intuitive expectations, undergraduate students performed in a manner nearly identical to real jury panel members (Bornstein, 1999; Rose & Ogloff, 2001). So, although not eliminated entirely, the problem of inadequate sampling was addressed as effectively as possible within the confines of participant access and availability.

Inadequate trial simulations.

Ecological validity of simulations.

Previous research into the validity of jury simulation paradigms has clearly asserted that brief written case summaries cannot mirror the complexity of actual trials (Weiten & Diamond, 1979), and the trend towards more realistic trial

simulations has reflected acknowledgement of this reality (Diamond, 1997). Aside from a live trial simulation (which raises a number of practical difficulties), a videotape of one, like the ones used throughout this series of studies, is the most realistic type of simulation available. Despite this, it must still be acknowledged that videotaped simulations are not necessarily an accurate representation of a real trial. Trials are complex and time-consuming events, which generally last at least one full day, if not many weeks, and even the most elaborate simulations are usually forced to abbreviate the trial process for practical reasons (Diamond, 1997).

In the current series of studies, the trial simulation DVD used in Experiments 1, 2 and 3 lasted 55 minutes, and the longest trial simulation DVD (the length complexity version used in Experiment 4) was 73 minutes. These relatively short durations were chosen for practical reasons; participants had time-consuming questionnaires to complete following the simulation, and it was thought that limiting total participation time to under 2 hours 30 minutes would encourage greater participant cooperation. The content of the current trial simulations was not unduly sparse or simplistic, but though convincing justifications for shortened trial length can be provided, it cannot be disputed that a participant's experience of a 55 minute trial simulation is entirely different from a juror's experience of a 3 day trial, and this has important implications for information processing.

Not only is a real trial lengthier, the density of the material presented and the format in which it is delivered may be quite different. Rather than the solid block of information presented in an uninterrupted succession of witnesses which typifies a trial simulation, real trials may be punctuated with frequent breaks between information delivery or recesses where the jury are asked to leave the courtroom while legal argument continues. Obviously, differences between real trials and simulations regarding the rate of information delivery, the length of time over which

it is delivered, and the amount of information itself, may lead to differences in the efficacy of information processing and comprehension demonstrated by jurors (Aiken et al., 1975). This particular criticism of the simulation paradigm is more difficult to address, considering the practical limitations described above.

Although they do not directly influence the length of the trial, there are a number of characteristics which were employed in the current series of experiments to help increase the verisimilitude of the trial simulation. The simulations were created in an unused courtroom, and all actors representing legal professionals featured in the DVD wore courtroom attire, including gowns and wigs, so the setting appeared realistic to viewers. In addition, participants in Experiment 1 viewed the simulation DVD on a projection screen from the jury box in an actual courtroom. As such, the setting and atmosphere in which the simulation was viewed also assisted in making the experience more realistic and engaging for participants. So, clearly trial simulation length remains problematic from the perspective of an ecological validity ideal, however in the current series of experiments, other attempts were made to ensure an acceptable level of simulation verisimilitude.

Problems concerning use of a single case.

Another noteworthy concern with regard to the trial simulation is that "any simulation that depends on a single case is potentially idiosyncratic in ways that may modify the influence of independent variables being studied," (Diamond, 1997, p. 566). Although use of the same videorecorded material (with only such variations as were necessary to carry out the manipulations intended) optimised comparability between the four experiments, Diamond (1977) makes a legitimate point. However, studying multiple cases is difficult to achieve, particularly where elaborate videotaped simulations are being used. While the current study utilised three

different versions of the same trial in Experiment 4, the basic content of the case remained consistent, so this dependence on a single case may threaten the generalisability of the current results and thus constitute cause for criticism. Of course, if similar results could be replicated using a different trial simulation, this issue would be suitably addressed, so perhaps this constitutes a task for future research.

Lack of jury deliberation.

There is no longer dispute among jury researchers regarding the value of examining the impact of the information sharing and discussion which typically comprises the deliberation process on both jury verdicts (Diamond, 1997) and comprehension of trial content (Lieberman & Sales, 1997). In the current series, the focus of Experiment 3 was to investigate whether any individual benefits gained through the jury-aids introduced by Experiments 1 and 2 were maintained, increased, or decreased following deliberation, thereby acknowledging the importance of studying the effects of this process.

That said, realistic recreation of the deliberation process is an entirely separate matter. Real jurors can deliberate for as long as they think fit. Allowing unlimited deliberation time for participants in simulation experiments would therefore be ideal, but it is not always possible to accurately simulate this aspect of jury deliberation, given the relevant practical constraints. Deliberating participants in Experiment 3 of the current series were allowed 30 minutes, but in order to increase the ecological validity of this aspect of their experience, participants were not made aware of this time limit. It was hoped that this would allow the deliberation process to proceed more naturally, and still provide enough time for a degree of information sharing which would be sufficient to have an appreciable

effect on jurors' comprehension. Despite these attempts at improving deliberation-related verisimilitude, the short deliberation time remains a potential criticism of the study.

Differences in the performance of six- and 12-person juries have been demonstrated (Horowitz & Bordens, 2002), so the fact that the juries employed in Experiment 3 consisted of four to five participants may also decrease the generalisability of the results. Potential presence of pre-existing acquaintance between participants also constitutes an area of legitimate concern (Hannaford, Hans, & Munsterman, 2000). Typically, jurors have not met their fellow deliberators prior to the commencement of the trial, but in Experiment 3 of the current series, use of the student population meant that it was possible that participants knew those they were deliberating with. This should not have had a major impact on the way information was shared throughout the deliberation process, but it is another distinction between real and simulated deliberation which must be acknowledged.

Inappropriate dependent variables.

The main criticism of dependent variables within simulation paradigms focuses on the use of scales of guilt probability and sentences; in reality, criminal juries decide guilt on a dichotomous scale, and are not usually involved in sentencing (Weiten & Diamond, 1979). Once again, juror verdicts were not the main focus of the current series, but even so verdict choice was obtained using a dichotomous guilty/not guilty choice to maintain ecological validity.

Use of multiple-choice questions.

The other dependent variables (juror comprehension of facts and law, and ability to apply the law to novel situations) were assessed via multiple-choice questions. While not necessarily inappropriate, there are some noteworthy concerns

in using this type of measure; namely that mere guessing can lead to a high percentage of correct responses (Lieberman & Sales, 1997). With that in mind, questions which require participants to generate their own answers are considered more desirable (Lieberman & Sales, 1997) but on the other hand, issues with coding answers and judging accuracy raises another equally concerning set of scoring problems. There is also an important distinction between achieving a sound understanding of a particular concept, and being able to successfully express that understanding; questions which require participants to generate their own responses can only assess the latter.

In hindsight, the measure of law comprehension utilised in the current series of experiments could be improved. Smith (1991) established that comprehension of the law is not a unitary concept, but rather can be defined by three different types of understanding: abstract comprehension of legal principles, ability to apply the law to the facts of the instant case, and ability to apply the law to novel facts. The current studies assessed both abstract comprehension of legal principles (via the multiple-choice law questions), and ability to apply the law to novel facts (via the multiple-choice scenario questions), but although these are ideal byproducts of jury instruction, they are not necessary for competent juror performance (Smith, 1991). Although requiring participants to reach a verdict indirectly assessed ability to apply the law to the instant case, the measure of law comprehension used in this series of studies might have been improved by designing multiple-choice law questions which directly assessed this type of applied rather than abstract understanding.

Recall versus comprehension.

Aside from these general concerns about style of dependent variable, the more specific issue of the best way to measure comprehension is also worth

considering. Is memory for judicial instructions a suitable measure of comprehension? Is willingness to apply judicial instructions a valid measure of comprehension? The ability to paraphrase or recall instructions assumes a basic understanding, and recognition tests examine memory, presumably on the basis that if a person understands an instruction, they will be more likely to store and retrieve information about it accurately. Tests of the ability to apply instructions to a novel hypothetical fact situation more closely resemble the task real juries undertake, but despite their apparent external validity, several studies (Semmler & Brewer, 2002; Smith, 1991; Wiggins & Breckler, 1990) including the current series, have failed to record significant results using such measures.

Using novel scenarios to test juror comprehension is considered an excellent addition to assessing comprehension via straight fact or law questions, as it requires jurors to apply the information presented in instructions to a specific set of circumstances; a skill which is vital to the verdict-reaching process (Severance & Loftus, 1982). However, when these scenarios present multiple-choice responses for jurors to choose their answer from, the same problems with guessing arise. In addition, presenting participants with a scenario and a simple guilty/not guilty choice provides insufficient information about the processes behind the verdict; it is quite possible for the participant to arrive at the "right" decision for the wrong reasons. In order to diminish the likelihood of this possibility, the scenario questions composed for the current series of experiments consisted of a brief scenario, followed by four verdict alternatives (two guilty, two not guilty), but each verdict alternative also included an explanation of the reason behind the verdict. Participants therefore not only had to indicate their chosen verdict, but were also required to select the "most correct" reasoning process for arriving at that particular verdict.

Despite these attempts to adjust scenario-type questions to improve their validity as a test of comprehension, this particular dependent variable was unsuccessful. As discussed in Experiment 2, the results returned by the scenario score measure were inconsistent and seemed to follow no identifiable pattern. They failed to support the hypotheses, and did not reflect the same pattern and direction of results revealed by the other objective measures of comprehension (possible reasons for this were offered). Accordingly, it was decided that continued reporting of these results was of limited value. So, although it is difficult to dispute that scenario-type questions should constitute a valuable addition to measures of comprehension in theory, this was not the experience in the current series of experiments, suggesting that this style of dependent variable perhaps requires some modification to better fulfil its potential.

External validity of dependent variables.

The other problem with the use of multiple-choice questions concerns their lack of external validity. For the purposes of the current series of experiments, such measures successfully assessed whether participants were able to use their own notes or the provided materials to locate the information needed to answer the question. However, completion of a multiple-choice questionnaire does not constitute a task which is reflective of the demands made on real jurors; some might suggest that it is more akin to completing a written examination than acting as a juror. It could also be argued that the questions presented to participants actually assisted them in navigating the provided materials, and that without the questions acting as a guide for participants' perusal of the provided notes, these materials might have been overwhelming and less accessible. On the other hand, it seems reasonable to suggest that when jurors identify portions of the trial they have forgotten or content that

requires further clarification, they would pose their own questions (Pennington & Hastie, 1992), and these would serve as the guiding impetus for their exploration of such provided materials.

Nonetheless, this general issue of the ecological validity of multiple-choice questions as a task presented to participants in simulation studies raises one of the difficulties for experimenters working with criminal as opposed to civil trial simulations. Real civil jurors may be required to perform several tasks, including distinguishing between differentially worthy plaintiffs and assigning damages, which translate well into tasks which are both ecologically valid, and constitute effective measures of juror comprehension. In contrast, real criminal jurors are simply required to deliver a single verdict, representing a dichotomous decision between guilty and not guilty. This is a very crude measure of competence, and one that tells very little about how effectively jurors process the information presented to them (Ellsworth, 1989). Thus, developing a dependent variable within a simulation experiment that provides sufficient information about participant comprehension and is also ecologically valid constitutes quite a challenge. Replication of the current experiments utilising such a dependent variable would be ideal, so addressing this particular challenge may constitute one component of the brief for future research in this area.

Concerns regarding self-report measures.

Self-report measures assessing level of understanding like the ones used in this series of experiments also raise some reliability concerns. Such measures are susceptible to social desirability effects, and jurors may falsely report high instruction utility because they are reluctant to admit reaching a verdict in a case where they did not fully understand the instructions (Lieberman & Sales, 1997),

although this is perhaps less of a concern in a simulation study. It is also possible that jurors believed that they truly understood the information presented in the materials and were able to use it effectively when this was not actually the case; subjective perceptions do not necessarily reflect objective reality. Although previous researchers have achieved some success when utilising self-report measures (e.g., Heuer & Penrod, 1994), the experience within the current series of experiments was less positive. Much like the scenario scores discussed above, results returned by the subjective measures generally failed to support the hypotheses, to follow any discernible pattern, or even lend themselves to a coherent explanation in some instances. Certainly, the manipulated variables (which did produce measurable differences in performance on the objective measures of comprehension) did not seem to have any uniform impact on participants' perception of their performance or experience. Whether this is an accurate reflection of reality or a symptom of some flaw within the measures themselves is difficult to determine.

The issue of role-playing.

The methodological issue which is perhaps most difficult to address with regard to jury simulation studies is the difference between the consequences of being a mock-juror and being a real one. Criticism tends to centre around the fact that mock-jurors' decisions may be more lenient, or harsher than those of real jurors, because the consequences of their decisions are hypothetical only, whereas real jurors know that their decision will determine the fate of a real person (Weiten & Diamond, 1979). While the effect of these hypothetical consequences on the decisions of jurors is less of a concern in this series of studies, the possibility that the consequentiality of the task may affect other aspects of the jurors' cognitions must also be considered. Presumably, jurors on real cases are more motivated to attend

carefully to the evidence and testimony presented, and participate sincerely in the deliberation process, in order to arrive at the most appropriate decision (Diamond, 1997). The fact that participants in the current research may have paid less attention to the trial simulation, taken fewer notes, or participated less earnestly in deliberation than would a juror on a real case is a noteworthy concern. In fact, Wilson & Donnerstein (1977) have demonstrated that real-consequence jurors recalled more of the trial evidence than hypothetical-consequence ones.

Participants in the current experiment were informed that they would be answering questions about the facts and law of the case after viewing the trial simulation; this may have been sufficient to induce greater motivation to attend to the mock trial. On the other hand, this may also have induced a very artificial approach to attending to the trial, with more emphasis given to facts than to perceptions of witnesses and other aspects which a real juror may take in to account. In addition to this issue of paying less attention during the trial itself, participants also may not have been motivated to complete the questionnaire to the best of their ability. They therefore may not have made as much use of their notes (own or provided) in trying to determine the correct answers.

A jury simulation experiment, by its very nature, is a simulation, and while it is impossible to transform the simulated into the genuine, experimenters can manipulate some aspects of the environment to increase the realism. Participants completed the first experiment of the current series in a real courtroom, only a few hours after arriving at the court to fulfil their real-world jury duty obligations; it is possible that the combination of the official context and the formal setting helped to make the experience more authentic and increase participant motivation, thereby lessening the possible negative effects associated with role playing. Although not a deliberate decision, the content of the trial itself may have also assisted in enhancing

participants' attention and engagement. The trial's focus on controversial issues surrounding euthanasia and assisted suicide may have made the trial more inherently appealing, thus facilitating interest and motivation to attend[10]. Clearly, differences in the consequences between being a juror on a real case and participating in a jury simulation study represent the most serious threat to the applied value of jury simulation research, and the most difficult methodological challenge to address (Weiten & Diamond, 1979).

Lack of corroborative field data.

Consideration of the above methodological concerns clearly indicates that there cannot be an automatic assumption of correspondence between laboratory and field study findings (Weiten & Diamond, 1979). Methodological diversity in the study of jury behaviour should be the ultimate goal (Bray & Kerr, 1979); even if presented with evidence obtained from the most elaborate simulation with optimal verisimilitude and maximised ecological and external validity, legal practitioners and policymakers may still be sceptical about the weight they should assign simulation studies, in part because it can always be argued that the trial was not real, and the jurors knew their decision would not affect the fate of the parties.

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[10] It should be noted that the strong personal opinions many individuals hold regarding such contentious issues as euthanasia and assisted suicide could have confounded the verdict dependent variable. Participants may have been unable to put aside personal opinions regarding these matters and may have reached their verdicts based on personal opinion alone rather than consideration of the relevant legal principles, believing the decision to be ethical rather than legal (Finkel, 1995). Had the current series of experiments focused on juror decision-making, this possibility would have been a concern, but since our interest lies more in the area of juror comprehension the controversial content of the trial was not considered to be so problematic.

To convince policymakers to depart from simply maintaining the status quo, results of simulation studies need to be powerful, and systematic empirical research is needed for policymakers to draw sound conclusions about proposals for modification of the legal system (MacCoun, 1987). Some field trials exist within the current area of study, however the most valuable of these rely on juror self-report rather than objective measures of performance (e.g., Heuer & Penrod, 1994). If a substantial degree of correspondence in results between laboratory findings like those detailed in this series of studies and a number of field trials can be demonstrated, otherwise justifiable scepticism from legal professionals and policymakers would be addressed, and the validity, predictive value, generalisability and utility of results obtained via simulation studies would be reinforced (Bornstein, 1999; Devine et al., 2001; Gerbasi, Zuckerman, & Reis, 1977).

When entertaining questions about jury functioning, the courts not only need to be willing to consider the answers provided by social science research and acknowledge the difficult methodological and ethical framework social scientists work within, they must also be enlisted in the effort to extend the findings of social science research via field trials. Such assistance will facilitate achievement of the ultimate goal of arriving at sound answers for the questions they are posing (Penrod & Heuer, 1997).

5.3 General Methodological Concerns

Aside from those methodological concerns which relate to the experimental paradigm itself, other aspects of the design and execution of the current series of experiments require some attention.

Premeasure.

Because factors such as education level have been consistently shown to relate to instruction comprehension (Benson, 1985; Lieberman, 2009; Severance et al., 1984), it is possible that the current experimental design might have benefited from the use of a premeasure, to rule out any pre-existing differences between the randomly assigned experimental groups. Attempts were made to control for pre-existing legal knowledge by limiting participation eligibility criteria, but a more specific premeasure was not utilised, and participants were not queried about prior jury service. This concern was highlighted by an inexplicable significant discrepancy between mean scenario scores in Experiment 1 (see Experiment 1 Discussion) which suggested the possible presence of a pre-existing difference between the randomly allocated groups of participants. Since this particular dependent variable was later abandoned due to questions surrounding its validity, this does not necessarily highlight a major methodological flaw, but it still served to highlight the question of equivalence.

Had the decision been made to utilise a premeasure, determining the most appropriate one would have been a difficult task; general verbal ability assessed by a vocabulary test, working memory capacity, logical memory ability and highest level of education achieved would all have constituted eligible candidates. Such premeasures are not commonly used in this area of research (e.g., ForsterLee et al., 2000; ForsterLee et al., 2005), so this is probably not an issue of crucial concern, but it deserves mention.

Working modifications.

Experiments 1, 3 and 4 were deliberately designed to be connected, but not interdependent, so that subsequent experiments within the series were not dependent

on the outcomes of previous ones. This relative flexibility maximised data collection opportunities and allowed participant availability to be capitalised upon, without the need to wait on interpretation of results from prior experiments. The disadvantage of this approach was the limited opportunity for alterations to the design, procedure and materials it allowed. Throughout this body of work several aspects in need of improvement have been identified (e.g., the difficulties experienced with the scenario score measure and subjective dependent variables), and had these aspects been modified, and their efficacy assessed in subsequent experiments, the current series of studies might have been capable of making a greater contribution to the wider body of literature. The requisite "ideal" conditions were not present to allow for such modifications, but this is certainly something that would have improved the quality of this series of experiments.

5.4 Summary of Findings

The competence of the jury to dispense justice has been a point of contention for some time now (Flango, 1980), and this series of studies aimed to investigate a possible remedy. The first experiment explored a basic comparison between jurors' own notes, and the proposed jury-aid of court-prepared provided notes; a combination of materials including a trial transcript, written copy of judicial instructions, chronology of events, offence criteria and verdict flowcharts. Results demonstrated that participants with access to these provided notes achieved significantly higher comprehension levels for the factual and legal information presented in the mock criminal trial than participants who had access to notes they had taken themselves. Participants also evaluated provided notes as being more useful overall than participants' own notes, leading to the conclusion that provided

notes may constitute a viable alternative to participants' own notes as a jury-aid designed to improve levels of juror comprehension.

Considering that trial transcripts are readily prepared, time- and cost-efficient jury-aids, the inclusion of supplementary court-prepared materials could only be justified if the comprehension advantage offered by these additional materials could be demonstrated. The second study in the series was designed to investigate this research question by separating the remaining components of the provided notes package from the trial transcript component. The results revealed that for measures of both fact and law comprehension, participants with access to the trial transcript plus the additional court-prepared materials achieved significantly higher scores than participants with access to the trial transcript alone, thus confirming the importance of the additional materials, and the viability of a provided notes package as an alternative jury-aid to juror notetaking.

With this established, the final two experiments were intended to examine various factors and processes which may influence the relative utility of own and provided notes. Experiment 3 focused on the impact of the anticipation of working in a group, and the deliberation process itself, on participants utilising own or provided notes. Comprehension scores of participants with access to provided notes were again significantly higher than those of participants who took their own notes, but no differential effects for the two note types were observed. As a comprehensive, court-prepared set of materials, the provided notes were expected to minimise any potential difficulties and maximise the potential benefits arising from the group-work anticipation and deliberation factors, but participants with provided notes and those with own notes were similarly impacted, indicating that the provided notes were no more robust than participants' own notes.

One interesting result to emerge from Experiment 3 was the finding that the comprehension of deliberating participants overall was lower than that of nondeliberating and ruminating participants. This result raises some important questions about the impact of deliberation on individual comprehension and assumptions of group superiority which were beyond the scope of the current series of studies, but should be addressed in future research in the area.

The final study in the series examined the impact of differing dimensions of trial complexity on the comparative utility of own and provided notes. Results again confirmed that regardless of complexity type, participants with access to provided notes performed better on objective measures of comprehension than participants who took their own notes. Participants in the length complexity condition achieved the lowest fact scores compared to participants in the remaining complexity conditions, but there were no significant differences between participants' performance according to complexity condition on the law score measure. The absence of any significant interactions suggested that neither own nor provided notes addressed particular types of trial complexity with differing degrees of efficacy. Because of the counterintuitive nature of this result, further research was recommended, but qualified with caution about the design and control difficulties which characterise this area of investigation.

Taken together, this series of experiments has demonstrated that participants acting as jurors were able to make use of a collection of court-prepared provided materials to answer multiple-choice questions about the facts and law of a mock criminal trial they observed. Participants were evidently not overwhelmed by the amount of material contained within these provided notes, and achieved significantly higher scores on objective measures of fact and law comprehension than participants who utilised notes they had taken themselves. Regardless of other variables being

manipulated, this result was consistently replicated throughout the series of studies, firmly establishing the superiority of provided notes over own notes. Various mechanisms were proposed to explain this superiority; the advantage conferred by provided notes might be related to the fact that they present the trial information in an understandable and accessible format, and allow participants the opportunity to review the material as many times as necessary, therefore encouraging participants to expend cognitive effort and engage in systematic processing of the material (Petty & Cacioppo, 1986); alternatively, or in addition, the value of provided notes might lie in their ability to give jurors a more comprehensive and balanced representation of the facts and law of the case, thus redressing the lack of balance likely in jurors' own notes (Ellsworth, 1989).

The design of the experiments in the current series does not allow further elucidation of the precise mechanism behind the relative success of the provided notes, but the consistency with which this result was reported means that it can be suggested with some confidence that provided notes clearly constitute a viable alternative to jurors' own notes. Provided notes represent a valuable jury-aid which effectively enhances juror comprehension of both the factual and legal content of a trial to a level higher than that achieved by jurors' own notes, and without any of the concerns that have been raised with regard to own notes.[11] Adopting such a measure as a jury-aid reform should therefore be seriously considered.

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[11] The aim of the current series of studies was to investigate the possible advantages conferred by provided notes, not to identify potential problems with the use of jurors' own notes. Provided notes are discussed as an alternative to own notes, but this research does not purport to provide any additional evidence or comment on the viability of jurors' own notes, as the potential drawbacks of notetaking were not directly investigated. In this context, the suggestion that provided notes may

5.5 Implementation of Jury-Aids

The obvious policy implication of this body of work is for the eventual implementation of court-prepared provided notes in a real-life courtroom setting to be considered. In reality, introducing a reform of this magnitude would no doubt encounter substantial obstacles and objections which must be considered.

Resources required for implementation.

An idealist might suggest that where the possible outcome is better informed jurors able to return higher quality verdicts, no cost or effort is too great, but this issue must be considered pragmatically; from a practical viewpoint, it could be argued that the development of such court-prepared materials would place an unrealistic burden on the courts. The provided materials would indeed need to be subjected to rigorous quality control to ensure their accuracy and impartiality, but it is possible to see how this could be done without placing undue burden on the judicial system. The court stenographer's main function is to transcribe the trial, so the resources required to prepare the transcript component of the provided notes are already in place. Similarly, a written copy of the judicial instructions essentially constitutes a simple add-on to the transcript, and should therefore require minimal additional resources to produce. Development of the offence criteria would be somewhat labour-intensive, however like pattern instructions, these criteria would not be case specific and could therefore be largely standard for the type of offence, based on the relevant legislation. Once completed, such criteria would not need to be replaced (unless the legislation itself changed). Verdict flowcharts, which would reflect specific characteristics of the relevant case, would need to be prepared by the

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constitute a more useful alternative to jurors' own notes should not be interpreted as evidence for the abolition of juror notetaking.

judge, and although this would constitute an additional requirement, some judges already create similar flowcharts to assist jurors in particularly complex cases, so it is clearly not an entirely unreasonable expectation. Finally, the chronology of events, which would also be specific to each particular trial, would have to be overseen by the judge and counsel, and vigorously monitored to ensure both parties agreed that it included undisputed material only. Certainly, the ease of development of these more case-specific materials and the judicial time and effort required is likely to vary with the nature and complexity of the particular case. So, development of such court-prepared materials would indeed require a significant commitment, but a large proportion of this would be limited to the one-time development of the offence criteria, and the resources needed to sustain the ongoing creation of the case-specific materials should not place undue stress on the judicial system, considering that many of them would capitalise on pre-existing services. In fact, in comparison to actually changing court procedures, these jury-aids are arguably a relatively unobtrusive way to enhance jurors' comprehension of the facts and law of a criminal trial (ForsterLee et al., 2005).

Objections from professionals.

While legal professionals might be expected to enthusiastically endorse reforms which may lead to increased juror comprehension and improved verdict quality, such jury-aids may still encounter opposition. Professionals may express concerns that provided notes will increase deliberation time (though no evidence for this concern has been demonstrated: e.g., Heuer & Penrod, 1988), or that they could be more harmful than the neglect they are designed to address (Wissler, Kuehn, & Saks, 2000). Provision of additional materials in an attempt to aid jurors' understanding of the law has previously been met with anecdotal criticism. Sand and

Reiss (1985) reported a small field study which evaluated the implementation of jury-aid procedures, including the provision of written judicial instructions. Responses to this reform were largely positive, however several lawyers who considered the procedure to be unhelpful cited concerns that it encouraged the jury to interpret the law on their own rather than asking for clarification and assistance from the judge. Legal professionals may be similarly concerned that provided notes will encourage unwanted independence in jurors, while others may argue that the demonstration of investment and trust conveyed by allowing jurors access to such materials will empower jurors, enhancing their confidence and motivation (ForsterLee et al., 2005). It would, of course, be possible for courts to address these concerns by including an explicit instruction that jurors are welcome to ask any questions they wish, notwithstanding that they will receive a large amount of material designed to assist them (Sand & Reiss, 1985).

It is an unfortunate truth that practices which are optimal to avoid appealable error may not be the same as procedures which are optimal for enhancing the comprehension of jurors (Ogloff et al., 2006), and it is possible that legal professionals may raise concerns about exposing themselves to appeals on decisions made in cases utilising provided notes. It is conceivable that parties may argue that deviations from regular instructions were problematic, or that the content of particular components of the provided notes was unfairly biased, and this may form the basis for an appeal (Lieberman, 2009). Any reform which increases the likelihood of decisions being appealed is not likely to be considered favourably, so policymakers would have to work on introducing guidelines around the development of case-specific material to ensure this was not a significant concern for legal professionals.

Justification of resources required for implementation.

The next logical step is to consider whether the benefits conferred by the provided notes are substantial enough to justify the related practical and administrative difficulties which may arise, the objections potentially voiced by legal professionals, and the substantial investment of time and resources required to facilitate their implementation (Smith, 1991). The current series of studies has certainly established that, relative to those afforded by jurors' own notes, the comprehension benefits conferred by provided notes are significant, but are the absolute levels of comprehension achieved by participants with access to provided notes equally impressive?

From the studies comparing comprehension scores of participants with access to the complete collection of provided notes to those of participants who took their own notes, the discrepancy between the mean percentage of correctly answered fact questions is substantial (approximately 60% for own notes participants, compared to 89% for provided notes participants). The mean percentage of correct responses for participants with access to provided notes (89%) indicates that these materials are facilitating a high standard of fact comprehension. Indeed probably a standard high enough to justify the effort required to develop and implement such materials.

The results regarding law comprehension, however, are perhaps less convincing. The discrepancy between the mean percentage of correctly answered law questions (approximately 52% for own notes participants, compared to 65% for provided notes participants) is large enough to illustrate the advantage of allowing jurors access to provided notes, however the absolute levels of law comprehension demonstrated by participants in the provided notes conditions (between 61% and 70% accuracy) are less impressive, and the improvements in comprehension are far

from approaching perfection.[12] However, it should be noted that the judicial instructions utilised in this series of studies (which contain most of the legal content) were not modified in any way to improve their comprehensibility. Perhaps overall levels of legal comprehension would be improved if the study was conducted utilising instructions that had undergone psycholinguistic revisions to improve their comprehensibility (Elwork et al., 1982). Also, these overall accuracy rates do not allow prediction of potential accuracy rates had individual knowledge and understanding (which may have extended in different directions for individual jurors) been pooled in a group setting, with participants completing a single questionnaire as a group of 12 rather than individually. When evaluating absolute comprehension levels, perhaps these rates based on individual responses are less relevant; so long as jurors continue to participate in the process of deliberation and deliver their decision as a group, it is the absolute comprehension of the jury, not the individual juror, that the judicial system is most concerned with. Asking participants to complete the questionnaire as a group, rather than individually, was proposed in the discussion of the results of Experiment 3. Obviously, this kind of methodology would require large participant numbers to achieve sufficient power, but would provide valuable information about pooled accuracy rates.

Discussion of absolute accuracy rates naturally leads to the consideration of one of the most difficult issues in this body of research; if we are striving to improve comprehension levels, what exact level of comprehension are we aiming to achieve, and how do we determine when comprehension levels have reached an "acceptable"

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[12] It should be noted that the comprehension test devised and administered in the current series may differ from those devised by other experimenters, thus possibly generating different absolute comprehension rates. So, while these absolute comprehension rates warrant discussion, the rates are most meaningful when compared across note type conditions (Elwork et al., 1982).

standard (Elwork et al., 1982)? Some researchers have created their own arbitrary parameters for defining "acceptable" comprehension levels (e.g., Elwork et al.,1982, required that eight out of 12 jurors understood any given point of law, and that eight out of 10 juries attained this same level of individual comprehension), but there is no objective indicator or operationalised definition of what constitutes "sufficient" levels of understanding against which social scientists can gauge results. This makes it difficult to determine whether the absolute levels of legal accuracy achieved by participants in the provided notes conditions are high enough to justify the effort required to implement such reforms.

Brewer et al.'s (2004) study, which demonstrated that even undergraduate law students who had completed a criminal law topic covering the law of self-defence did not achieve anywhere near the ceiling on self-defence comprehension measures, suggests that accuracy rates of 100% (or close to) are unrealistic for ordinary jurors to achieve. Is a 75% accuracy rate sufficient then? Should "sufficient" comprehension rates differ according to the centrality of the particular issues being tested? Although it is ultimately up to policymakers and not researchers to answer this question, it is an issue that needs to be considered when evaluating how appealing the results of the current body of work may be to such policymakers.

Overcoming potential obstacles.

While it is true that provided notes may have to overcome several obstacles and objections before they are seriously considered as a possible reform by the judicial system, this should not be impossible. When juror notetaking was initially proposed as a possible jury-aid, legal professionals expressed many concerns about the problems such a procedure might involve, but over time many of these have been resolved, and allowing jurors to take notes, although not employed consistently

across jurisdictions, is now more commonplace (Ogloff et al., 2006). Further research confirming the efficacy of provided notes and addressing any concerns raised may facilitate a similar attitude shift with regard to this particular reform.

5.6 Implications for the Field

Aside from the obvious practical implications of the current research, there are some more general comments that can be made. Firstly, previous studies have tended to investigate jury-aids in isolation, and many of the components of the provided notes utilised in the current experiment have been examined previously (e.g., Semmler & Brewer, 2002 investigated flowcharts, Bourgeois et al., 1993 investigated transcripts). By demonstrating that participants are able to successfully navigate a large bundle of such materials and still achieve enhanced comprehension levels, perhaps the current series of studies suggests the need to focus more on combinations of potential jury-aids, rather than investigating them in isolation. Further exploration of the mechanisms by which provided notes as a whole, and particular components of provided notes, enhance juror comprehension, may also be valuable in facilitating suggestions of more parsimonious combinations of materials.

Secondly, as highlighted above, it was beyond the scope of the current series of experiments to further examine the result that deliberating jurors achieved significantly lower levels of comprehension that nondeliberating and ruminating jurors. The idea that the deliberation process may have an adverse effect on individual comprehension is concerning, and sits in direct contrast to one of the main reasons for the current design and operation of the jury today (Ellsworth, 1989). Ongoing clarification of the interaction between deliberation and juror comprehension is essential.

Aside from clarifying ambiguous or surprising results arising from the current series of studies, this research could be extended in a number of ways. Modern technology is not foreign to the court system, and there is some scope for the jury-aids discussed in this body of work to be adapted to benefit from the use of audio-visual or computer technology. Research has previously been conducted on the use of animations and pictures to supplement verbal material (Brewer et al., 2004), so the possibility of substituting key components of text within the provided materials with pictures as a way of further clarifying the material might warrant investigation. Different methods of delivery of the same content which are potentially more engaging or effective should be explored. Australian High Court judge, Justice Kirby expressed some concern about the need for jury procedures to be adapted to the digital age, so that generation-Xers born between 1961 and 1981 (and this statement could be confidently extended to include generation-Yers born post 1981), who are accustomed to a high level of control over information technology, do not become bored and frustrated by their jury-service experiences (Kirby, 1998).

5.7 Conclusion

Depending on which jurisdiction they are serving in, the primary jury-aid jurors currently have access to is the opportunity to take notes, but this jury-aid is not routinely employed due to concerns regarding potential drawbacks. The current series of experiments investigated a potential alternative, in the form of a combined package of court-prepared materials, and demonstrated that participants utilising provided notes achieved significantly better comprehension levels for the facts and law of a mock criminal trial (as evidenced by significantly higher scores on a multiple-choice questionnaire) than participants who took their own notes. The aforementioned methodological limitations must be considered when assessing the

overall potency and implications of this result, but nonetheless, it makes a compelling case that provided notes should be viewed as a potential alternative to jurors' own notes in the ongoing pursuit of means to improve juror comprehension. Testing the comprehension-enhancing qualities of provided notes observed in these mock-jury experiments in actual courtroom studies is the next necessary step in this process of identifying, testing and implementing such reforms.

A fundamental paradox exists within the justice system; it is designed to enable judges and lawyers to practice law, but places ordinary people who are not legal professionals at the heart of its operation (Lieberman, 2009). These nonlegal professionals will inevitably struggle to fulfil their duties as jurors if the system is not adjusted to accommodate their participation, and the current series of studies proposes one such possible reform. It is hoped that this research will constitute a valuable contribution to the body of work examining potential jury-aids, and will facilitate the study and implementation of this particular alternative to jurors' own notes. Such jury-aids should empower the jury to function consistently with the original philosophies it was created to embody, and ensure that while justice remains appropriately blind, the jurors attempting to deliver it do not (Gerbasi et al., 1977; McLaughlin, 1982).

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Appendix A

Experiment 1 Information and Consent Forms

Private Bag 30 Hobart
Tasmania Australia 7001
Telephone (03) 6226 2237
Facsimile (03) 6226 2883

School of Psychology

INFORMATION SHEET
PhD RESEARCH PROJECT

Title of Investigation: ***Effect of Jury-Aids on Juror Recall, Application and Decision Making***

Name of chief investigator: Peter Ball
Name of other investigator: Erin Kelly

Purpose of the Study:
This study is being undertaken by Erin Kelly under Jeff Summers' and Peter Ball's supervision as part of the requirements of the School of Psychology's PhD Program at the University of Tasmania. The purpose of this study is to investigate the influence of jury aids on juror's ability to recall facts and law, and apply the law to new situations.

Participant Benefit:
Being a participant in this study will probably not be of direct benefit to you personally, except to make you more aware of how psychological principles and experimental methods contribute to research in the area of criminal justice. However, by participating you will yourself have the satisfaction of being part of that contribution.

Inclusion/Exclusion Criteria:
Participants must be jury eligible; this means they must be over 18 years of age, and physically and mentally able to perform jury duty. Police officers, practicing lawyers, and any other people involved in the investigation of crimes or punishment of offenders will be excluded. People convicted of crimes and sentenced to more than three years imprisonment are also excluded. Participants must have normal or corrected vision and hearing abilities, and have a good understanding of the English language.

Study Procedures:

Participants will be asked to watch a video of a criminal trial re-enactment. Following this, participants will complete a questionnaire which includes 30 multiple choice recall questions, 10 multiple choice scenarios, and a few ratings scales It is expected that participation in this study will take no longer than two hours. The study will take place at a time and venue to be determined in consultation with the participants.

Trial Contents:
The criminal trial video you will see re-enacts the case of a sufferer of Motor Neurone disease, whose lover is charged with assisting his suicide. As such, it deals with issues such as euthanasia and assisted suicide for sufferers of chronic illnesses. While the trial itself is in no way distressing, if these issues are likely to cause you some personal distress for any reason, you are advised not to take part in the study.

Debriefing:
In much psychological research it is not possible to provide complete information beforehand without undermining the validity of the study, but full information is made available during debriefing. Debriefing will occur immediately following your participation in the study. It is also important to refrain from disclosing information to any other potential participant which would make that person ineligible to take part in this study.

Confidentiality:
All results from this experiment will be stored on a password-protected computer and lockable storage in the School of Psychology. Your name will be recorded on the consent sheet you are required to sign, but consent forms will be stored separately from experimental data. Your age and sex are the only personal details that will be recorded with the experimental data, so your results will not be identifiable. This means you cannot be identified as a subject in the final published report. The data has to be archived for at least 5 years. If it is later destroyed, any paper copy will be shredded and computer files will be deleted.

Freedom to Refuse or Withdraw:
Participation is entirely voluntary, and will be evidenced by the signing of a consent form. You can withdraw at any time without any consequent disadvantage to you, either academic or otherwise.

Recompense for your time and trouble:
As a token of our appreciation of your taking the trouble to participate in this research, at the end of your session, you will receive a voucher entitling you to a free hot drink at Café Zum (Salamanca Place). The voucher can be redeemed at Café Zum Salamanca on the day of your participation **only**, upon presentation of the voucher.

Contact Persons:
If you have any questions regarding this study, you can contact Peter Ball (email: P.Ball@utas.edu.au, telephone 6226 2386) or Erin Kelly (email: elkelly@utas.edu.au, telephone 6226 2238).

Ethics Approval:

This project has received ethical approval from the Human Research Ethics Committee (Tas) Network.

Concerns or Complaints:
You can contact the Ethics Executive Officer, Nadia Majouri, with any concerns or complaints regarding the way this research is being conducted. Phone 6226 7479 or email human.ethics@utas.edu.au.

If you have any ethical or personal concerns related to the study, you may choose to discuss these concerns confidentially with a University Student Counsellor who can be contacted on 6226 2697. For non-students, you can receive independent counselling at the University Psychology Clinic (6226 2805).

Results of the Investigation:
If you wish to be informed of the results of the experiment, please contact either Erin Kelly or Peter Ball. A summary of the results will be made available on the University of Tasmania's web site at the conclusion of the study.

Information Sheet and Consent Form:
You will be given copies of the information sheet and statement of informed consent to keep if you wish them.

Erin Kelly Peter Ball

Private Bag 30 Hobart
Tasmania Australia 7001
Telephone (03) 6226 2237
Facsimile (03) 6226 2883

School of Psychology

UNIVERSITY OF TASMANIA

STATEMENT OF INFORMED CONSENT
PhD RESEARCH PROJECT

Title of Project: *Effect of Jury-Aids on Juror Recall, Application and Decision Making*

For the Participant:

1. I have read and understood the Information Sheet for this study.
2. The nature and possible effects of the study have been explained to me.
3. I understand that the study involves viewing a video of a criminal trial re-enactment and completing a questionnaire which includes 30 multiple choice recall questions, 10 multiple choice scenarios, and a few ratings scales. Participation should take no longer than two hours, and will occur at a venue convenient to me.
4. I understand that the trial video involves some potentially sensitive topics, including euthanasia and assisted suicide for sufferers of chronic illnesses.
5. I understand that there are no known risks of this study.
6. Any questions that I have asked have been answered to my satisfaction.
7. I appreciate that in much psychological research it is not possible to provide complete information beforehand without undermining the validity of the study, but that full information is made available during debriefing, and I undertake not to disclose to any other potential participant information which would make that person ineligible to take part in this study.
8. I agree that research data gathered for the study may be published provided that I cannot be identified as a subject.
9. I would like to participate in this study and understand that I may withdraw at any time without academic or other prejudice.

Name of Participant: …….

Signature of Participant: …….. Date: …….

For the Investigator:

I have explained this project and the implications of participation in it to this volunteer and I believe that the consent is informed, and that he/she understands the implications of participation.

Name of Investigator: ……..

Signature of Investigator: ……. Date: ……..

Experiment 2 Information and Consent Forms

Private Bag 30 Hobart
Tasmania Australia 7001
Telephone (03) 6226 2237
Facsimile (03) 6226 2883

School of Psychology

UNIVERSITY OF TASMANIA

INFORMATION SHEET
PhD RESEARCH PROJECT

Title of Investigation: ***Effect of Jury-Aids on Juror Recall, Application and Decision Making***

Name of chief investigator: Peter Ball
Name of other investigator: Erin Kelly

Purpose of the Study:
This study is being undertaken by Erin Kelly under Peter Ball and Jenn Scott's supervision as part of the requirements of the School of Psychology's PhD Program at the University of Tasmania. The purpose of this study is to investigate the influence of jury aids on juror's ability to recall facts and law, and apply the law to new situations.

Participant Benefit:
Being a participant in this study will probably not be of direct benefit to you personally, except to make you more aware of how psychological principles and experimental methods contribute to research in the area of criminal justice. However, by participating you will yourself have the satisfaction of being part of that contribution.

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Study Procedures:
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study will take place at a time and venue to be determined in consultation with the participants.

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Debriefing:
In much psychological research it is not possible to provide complete information beforehand without undermining the validity of the study, but full information is made available during debriefing. Debriefing will occur immediately following your participation in the study. It is also important to refrain from disclosing information to any other potential participant which would make that person ineligible to take part in this study.

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All results from this experiment will be stored on a password-protected computer and lockable storage in the School of Psychology. Your name will be recorded on the consent sheet you are required to sign, but consent forms will be stored separately from experimental data. Your age and sex are the only personal details that will be recorded with the experimental data, so your results will not be identifiable. This means you cannot be identified as a subject in the final published report. The data has to be archived for at least 5 years. If it is later destroyed, any paper copy will be shredded and computer files will be deleted.

Freedom to Refuse or Withdraw:
Participation is entirely voluntary, and will be evidenced by the signing of a consent form. You can withdraw at any time without any consequent disadvantage to you, either academic or otherwise.

Contact Persons:
If you have any questions regarding this study, you can contact Peter Ball (email: P.Ball@utas.edu.au, telephone 6226 2386) or Erin Kelly (email: elkelly@utas.edu.au, telephone 6226 2238).

Ethics Approval:
This project has received ethical approval from the Human Research Ethics Committee (Tas) Network.

Concerns or Complaints:
If participants have any concerns of an ethical nature, or complaints about the manner in which the project is conducted, they may contact the Executive Officer of the Network: 6226 7479.

If you have any ethical or personal concerns related to the study, you may choose to discuss these concerns confidentially with a University Student Counsellor who can be contacted on 6226 2697. For non-students, you can receive independent counselling at the University Psychology Clinic (6226 2805).

Results of the Investigation:
If you wish to be informed of the results of the experiment, please contact either Erin Kelly or Peter Ball. A summary of the results will be made available on the University of Tasmania's web site at the conclusion of the study.

Information Sheet and Consent Form:
You will be given copies of the information sheet and statement of informed consent to keep if you wish them.

Erin Kelly Peter Ball

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Telephone (03) 6226 2237
Facsimile (03) 6226 2883

School of Psychology

UNIVERSITY OF TASMANIA

STATEMENT OF INFORMED CONSENT
PhD RESEARCH PROJECT

Title of Project: *Effect of Jury-Aids on Juror Recall, Application and Decision Making*

For the Participant:

1. I have read and understood the Information Sheet for this study.
2. The nature and possible effects of the study have been explained to me.
3. I understand that the study involves viewing a video of a criminal trial re-enactment and completing a questionnaire which includes 30 multiple choice recall questions, 10 multiple choice scenarios, and a few ratings scales. Participation should take no longer than two hours, and will occur at a venue convenient to me.
4. I understand that the trial video involves some potentially sensitive topics, including euthanasia and assisted suicide for sufferers of chronic illnesses.
5. I understand that there are no known risks of this study.
6. Any questions that I have asked have been answered to my satisfaction.
7. I appreciate that in much psychological research it is not possible to provide complete information beforehand without undermining the validity of the study, but that full information is made available during debriefing, and I undertake not to disclose to any other potential participant information which would make that person ineligible to take part in this study.
8. I agree that research data gathered for the study may be published provided that I cannot be identified as a subject.
9. I would like to participate in this study and understand that I may withdraw at any time without academic or other prejudice.

Name of Participant: …….

Signature of Participant: …….. Date: …….

For the Investigator:

I have explained this project and the implications of participation in it to this volunteer and I believe that the consent is informed, and that he/she understands the implications of participation.

Name of Investigator: ……..

Signature of Investigator: ……. Date: ……..

Experiment 3 Information and Consent Forms

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School of Psychology

UNIVERSITY OF TASMANIA

INFORMATION SHEET
PhD RESEARCH PROJECT

Title of Investigation: ***Effect of Jury-Aids and Deliberation on Juror Recall, Application and Decision Making***

Name of chief investigator: Peter Ball
Name of other investigator: Erin Kelly

Purpose of the Study:
This study is being undertaken by Erin Kelly under Jenn Scott's and Peter Ball's supervision as part of the requirements of the School of Psychology's PhD Program at the University of Tasmania. The purpose of this study is to investigate the influence of jury aids and deliberation on juror's ability to recall facts and law, and apply the law to new situations.

Participant Benefit:
Being a participant in this study will probably not be of direct benefit to you personally, except to make you more aware of how psychological principles and experimental methods contribute to research in the area of criminal justice. However, by participating you will yourself have the satisfaction of being part of that contribution.

Inclusion/Exclusion Criteria:
Participants must be jury eligible; this means they must be over 18 years of age, and physically and mentally able to perform jury duty. Police officers, practicing lawyers, and any other people involved in the investigation of crimes or punishment of offenders will be excluded. People convicted of crimes and sentenced to more than three years imprisonment are also excluded. Participants must have normal or corrected vision and hearing abilities, and have a good understanding of the English language.

Study Procedures:
Participants will be asked to watch a video of a criminal trial re-enactment. Following this, some participants will deliberate for 30 minutes in groups of 4-5 people, and some will not. Participants will then individually complete a questionnaire which includes 30 multiple choice recall questions, 10 multiple choice

scenarios, and a few ratings scales It is expected that participation in this study will take no longer than two and a half hours. The study will take place at a time and venue to be determined in consultation with the participants.

Trial Contents:
The criminal trial video you will see re-enacts the case of a sufferer of Motor Neurone disease, whose lover is charged with assisting his suicide. As such, it deals with issues such as euthanasia and assisted suicide for sufferers of chronic illnesses. While the trial itself is in no way distressing, if these issues are likely to cause you some personal distress for any reason, you are advised not to take part in the study.

Debriefing:
In much psychological research it is not possible to provide complete information beforehand without undermining the validity of the study, but full information is made available during debriefing. Debriefing will occur immediately following your participation in the study. It is also important to refrain from disclosing information to any other potential participant which would make that person ineligible to take part in this study.

Confidentiality:
All results from this experiment will be stored on a password-protected computer and lockable storage in the School of Psychology. Your name will be recorded on the consent sheet you are required to sign, but consent forms will be stored separately from experimental data. Your age and sex are the only personal details that will be recorded with the experimental data, so your results will not be identifiable. This means you cannot be identified as a subject in the final published report. The data has to be archived for at least 5 years. If it is later destroyed, any paper copy will be shredded and computer files will be deleted.

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PhD RESEARCH PROJECT

Title of Project: *Effect of Jury-Aids and Deliberation on Juror Recall, Application and Decision Making*

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4. I understand that the trial video involves some potentially sensitive topics, including euthanasia and assisted suicide for sufferers of chronic illnesses.
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Name of Participant: …….

Signature of Participant: …….. Date: …….

For the Investigator:

I have explained this project and the implications of participation in it to this volunteer and I believe that the consent is informed, and that he/she understands the implications of participation.

Name of Investigator: ……..

Signature of Investigator: ……. Date: ……..

Experiment 4 Information and Consent Forms

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School of Psychology

UNIVERSITY OF TASMANIA

INFORMATION SHEET
PhD RESEARCH PROJECT

Title of Investigation: ***Effect of Jury-Aids and Trial Complexity on Juror Recall, Application and Decision Making***

Name of chief investigator: Peter Ball
Name of other investigator: Erin Kelly

Purpose of the Study:
This study is being undertaken by Erin Kelly under Jenn Scott's and Peter Ball's supervision as part of the requirements of the School of Psychology's PhD Program at the University of Tasmania. The purpose of this study is to investigate the influence of jury aids and trial complexity on juror's ability to recall facts and law, and apply the law to new situations.

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PhD RESEARCH PROJECT

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Signature of Participant: …….. Date: …….

For the Investigator:

I have explained this project and the implications of participation in it to this volunteer and I believe that the consent is informed, and that he/she understands the implications of participation.

Name of Investigator: ……..

Signature of Investigator: ……. Date: ……..

Appendix B

Experiment 1 Mock Criminal Trial DVD

Appendix C

Experiment 1 Questionnaire

Code:.....

Part A of this questionnaire consists of 30 multiple choice questions regarding the facts and law of the mock trial which you have just watched. More than one answer may be partially correct, but you are required to determine the *best* or *most correct* answer in each case. When you have made your selection, circle the appropriate letter. Answer all questions, and choose only one answer per question. If you change your mind, please make your final choice clear.

1. Which of the following is ***MOST*** correct?
a) That the final verdict decision of the case lies with the judge
b) To be found guilty of murder, the accused must be present at both the time of the act causing death, and the time of death.
c) The prosecution alone has the responsibility of proving guilt.
d) The jury may take in to account the severity of the deceased's suffering when determining whether the euthanasia was justified.

2. In the conversation about assisted suicide with Dr Greene, who initially raised the issue of euthanasia?
a) Dr Greene
b) Jane Mitchell
c) Stephen Taylor
d) Christine Taylor

3. Which of the following is ***NOT*** necessary to prove murder?
a) That the accused intended to kill the victim
b) That the accused's act caused the victim's death
c) That the accused's act was one which is commonly known to be likely to cause death
d) That the accused committed the act which caused the victim's death

4. When did the first conversation about assisted suicide, with Dr Greene, occur?
a) Jan 2002
b) Feb 2002
c) March 2002
d) July 2002

5. In defending the crime of murder, the Defence must:
a) disprove just one of the elements of the crime
b) demonstrate the good character of the accused
c) cross-examine all key prosecution witnesses
d) prove nothing at all

6. When was Stephen Taylor diagnosed with Motor Neurone Disease?
a) 1999

b) 2000
c) 2001
d) 2002

7. What was the concentration of Valium in Stephen Taylor's blood at the time of his death?
a) 2.9g/litre of blood
b) 0.29mg/litre of blood
c) 2.9mg/litre of blood
d) 0.29g/litre of blood

8. When did Christine arrive in Australia?
a) Feb 2002
b) March 2002
c) July 2002
d) August 2002

9. Which of the options below has the events in the correct chronological order?
a) Conversation where Stephen Taylor informs Christine about his desire to end his life; the conversation about assisted suicide involving Dr Greene; Stephen Taylor's decision to increase the bequest made to Christine's church; Stephen Taylor's birthday party.
b) Conversation where Stephen Taylor informs Christine about his desire to end his life; Stephen Taylor's decision to increase the bequest made to Christine's church; conversation about assisted suicide involving Dr Greene; Stephen Taylor's birthday party.
c) Stephen Taylor's decision to increase the bequest made to Christine's church; Conversation where Stephen Taylor informs Christine about his desire to end his life; conversation about assisted suicide involving Dr Greene; Stephen Taylor's birthday party.
d) The conversation about assisted suicide involving Dr Greene; conversation where Stephen Taylor informs Christine about his desire to end his life; Stephen Taylor's decision to increase the bequest made to Christine's church; Stephen Taylor's birthday party.

10. According to the evidence given in this case, how long does Motor Neurone Disease usually last for before it results in death?
a) 1-2years
b) 2-3 years
c) 2-4 years
d) 1-3 years

11. When did Jane Mitchell ring Christine on the night of Stephen Taylor's death?
a) Approximately 9:15pm
b) Approximately 9:35pm
c) Approximately 9:45pm
d) Approximately 9:55pm
12. Which of the following statements ***BEST*** describes the roles of the judge and jury?
a) It is the role of the judge to determine the law and the facts of the case, and the jury then applies the law to reach a verdict.

b) It is the role of the jury to decide the facts and law of the case, while the judge merely gives some direction.
c) While the judge decides what law is applicable, the jury must evaluate the evidence to determine the facts of the case, and then apply the law to these facts to reach a verdict.
d) The judge directs the jury on the relevant law, and the jury determines the facts. They then give their decision to the judge, who determines the ultimate verdict.

13. Sometime in 2002, Stephen Taylor made a Will – when was this?
a) 30 April 2002
b) 2 May 2002
c) 10 July 2002
d) August 2 2002

14. To be convicted of aiding or instigating suicide…
a) the accused must be involved in the planning of the suicide
b) the accused must be present at the time of the victim's death and when the acts causing death were committed
c) the accused must be present at the time of the acts causing the victim's death, but need not be present at the time of actual death
d) the accused must be present either at the time of the victim's death, or at the time when the acts causing death were committed

15. Stephen Taylor created a video expressing his desire to end his life – when did he make this video?
a) 30 April 2002
b) 2 May 2002
c) 10 July 2002
d) August 2 2002

16. How much time elapsed between the conversation about assisted suicide with Dr Greene, and Stephen Taylor's eventual death?
a) Approximately 2 months
b) Approximately 3 months
c) Approximately 7 months
d) Approximately 12 months

17. Which of the following statements is ***MOST*** correct?
a) The accused's only responsibility is to disprove one of the charges laid against her, and that will be sufficient to result in her acquittal.
b) The burden of proof lies with the Defence
c) In order for the case to be proved beyond reasonable doubt, the Crown must prove each fact it alleges.
d) Beyond reasonable doubt is the highest standard of proof known to law.

18. What was Dr Greene's assessment of Stephen Taylor's mobility on July 5 2002?
a) He thought Stephen would have been able to lift his hand to chest height, as long as he didn't have anything in his hand.
b) He thought Stephen would have been able to lift his hand to his face, as long as he didn't have anything in his hand.

c) He didn't think Stephen would be capable of lifting his hand above chest height, because he was profoundly weak.
d) He thought Stephen would have been able to support the weight of an object in his hand, but only if he didn't raise it above waist height.

19. Beyond reasonable doubt is…
a) The burden of proof
b) The obligation of proof
c) The standard of proof
d) The onus of proof

20. Which of the following is ***NOT*** an element of aiding or instigating suicide?
a) That the accused was involved in the planning of the suicide
b) That the accused was present at the time the acts causing the victim's death were committed
c) That the accused expressed support of the victim's actions
d) That the accused encouraged the victim's suicidal actions

21. Which of the following statements is ***MOST*** correct?
a) In order to prove the charge of aiding or instigating suicide the jury must be satisfied only that the victim suicided and that the accused helped to plan it
b) In order to prove the charge of aiding or instigating suicide the jury must be satisfied that the accused encouraged the victim's suicide ***and*** that the accused helped the victim to commit suicide
c) In order to prove the charge of aiding or instigating suicide the jury must be satisfied that the accused either intentionally commanded the victim to suicide, *or* that the accused encouraged the suicide by their words or actions
d) In order to prove the charge of aiding or instigating suicide the jury must be satisfied that the accused was present at the time of the victim's death

22. Jane Mitchell made a phone call to Christine Taylor, informing her of the severity of her father's condition – when was this phonecall made?
a) 30 April 2002
b) 2 May 2002
c) 10 July 2002
d) August 2 2002

23. In trying to prove the count of murder, the Crown must:
a) establish each of the elements of the crime
b) prove each fact that it alleges
c) establish the majority of the elements of the crime
d) prove both a and b

24. In this case, the accused could possibly be found guilty of…
a) murder only
b) aiding or instigating suicide only
c) ***both*** murder and aiding and instigating suicide
d) *either* murder or instigating or aiding suicide

25. When is the accused entitled to be acquitted?

a) if the Crown fails to prove the majority of the elements of each crime beyond a reasonable doubt.
b) if the Defence disproves the charges against the accused
c) if the Crown fails to prove each element of each crime beyond reasonable doubt
d) if the Defence proves the accused's innocence

26. Which of the following is ***NOT*** necessary to prove murder?
a) an intention to cause death
b) a reason or motive for causing death
c) an act resulting in the victim's death
d) that the accused committed the act which caused the victim's death

27. The fact that the accused has been charged…
a) can contribute towards proof of guilt
b) means that the burden of proof is reduced
c) has no implications at all
d) means that there is a strong case against the accused

28. Which of the following statements is ***MOST*** correct?
a) In order for guilt to be established beyond reasonable doubt, each of the elements of the offences must be proven on the balance of probabilities.
b) Although the accused is presumed to be innocent, in order for her to be acquitted, some evidence of her good character must be presented.
c) In order for guilt to be established beyond reasonable doubt, the majority of the elements of the offences must be established beyond a reasonable doubt.
d) The accused is presumed innocent, and does not have to prove her innocence.

29. Which of the following options has the events in the correct order?
a) Making of Stephen's video; Stephen Taylor wrote goodbye letter to Christine; Christine arrives in Australia; Stephen Taylor, Jane Mitchell and Christine Taylor discuss the contents of Stephen Taylor's Will.
b) Stephen Taylor wrote goodbye letter to Christine; Christine arrives in Australia; Stephen Taylor, Jane Mitchell and Christine Taylor discuss the contents of Stephen Taylor's Will; Making of Stephen's video
c) Christine arrives in Australia; Stephen Taylor, Jane Mitchell and Christine Taylor discuss the contents of Stephen Taylor's Will; Making of Stephen's video; Stephen Taylor wrote goodbye letter to Christine.
d) Making of Stephen's video; Christine arrives in Australia; Stephen Taylor, Jane Mitchell and Christine Taylor discuss the contents of Stephen Taylor's Will; Stephen Taylor wrote goodbye letter to Christine.

30. Which of the following statements is ***MOST*** correct?
a) The florist business was initially going to Jane Mitchell, but Stephen changed his Will, and left it to Christine Taylor.
b) Following Christine's request, Stephen changed his Will to make a bequest to Christine's church.
c) Stephen was going to change his Will to leave more of his estate to Jane.
d) The change Stephen wanted to make to his Will in the days before his death would only affect a small part of his estate.

Part B of this questionnaire consists of 10 multiple choice questions, which present you with a novel scenario and require you to apply the law you have learned about in the mock trial to these new situations. More than one answer may be partially correct, but you are required to determine the *best* or *most correct* answer in each case. When you have made your selection, circle the appropriate letter. Answer all questions, and choose only one answer per question. If you change your mind, please make your final choice clear.

1. Darren and Drew are out at their local pub. Shortly after arriving, their heated discussion about football turns into a fist-fight. They are thrown out of the pub, but continue fighting. Darren finds an empty bottle on the footpath, and smashes it in half. He charges at Drew, holding the smashed beer bottle, and screaming "I'm going to kill you!!" He slashes at Drew with the beer bottle, causing a deep wound on his chest, which begins bleeding badly. Drew is rushed to hospital to undergo a blood transfusion. Drew, however, is a Jehovah's Witness, and refuses the transfusion on religious grounds. He later dies. If Drew had accepted the transfusion, he would have survived.

If Darren is charged with murder contrary to s157(1)(a) of the Tasmanian Criminal Code, which of the following elements of the crime is going to be the <u>most difficult</u> for the Crown to establish?

a) That Darren intended to cause Drew's death.
b) That Darren's act of slashing at Drew with the beer bottle was directly and immediately connected to Drew's death.
c) That Darren was responsible for the act of slashing at Drew with the beer bottle.
d) That Darren's act of slashing at Drew with the beer bottle was a voluntary and conscious act.

2. Jim breaks into a house, believing it to be empty. As he moves around the house stealing items, he encounters Amy, the house's occupant, in the kitchen. She starts screaming very loudly, so in an attempt to stop her, Jim picks up a butcher's knife from the kitchen counter and says "If you don't stop screaming, I will kill you". Amy continues to scream, so he stabs her in the stomach, causing a deep wound. She is taken to hospital for an emergency operation, and her allergy to a particular anaesthetic is recorded on her hospital chart. Once in the operating theatre, however, Amy is administered with the anaesthetic she is allergic to. She subsequently dies on the operating table.

Jim is charged with murder contrary to s157(1)(a) of the Tasmanian Criminal Code. According to the elements which must be established, what would your verdict be?

a) Guilty, because Jim clearly intended to murder Amy, and his act was conscious and voluntary.
b) Not Guilty, because Jim's act of stabbing Amy with the knife is not directly and immediately connected to her death.
c) Not Guilty, because Jim did not intend to kill Amy when he committed the act of stabbing her with the knife.
d) Guilty, because Jim was clearly responsible for the act which caused Amy's death.

3. Megan's father, Don, has been diagnosed with terminal lung cancer, and has discussed with her the possibility of ending his own life. On a recent hospital visit, as Megan was leaving, Don explained that he was in a lot of pain and that he was ready to take his life. He retrieved a syringe loaded with morphine he had been keeping near his bedside, and held it out to Megan. Megan then injected the large dose into his drip, and left immediately, disposing of the syringe. Don was found dead in the morning, and it was determined that he died approximately 1 hour after Megan was seen leaving his room.

Which of the following verdicts would you consider to be <u>most appropriate</u>?

a) Not Guilty of aiding or instigating suicide contrary to s163 of the Tasmanian Criminal Code.
b) Not Guilty of murder contrary to s157(1)(a) of the Tasmanian Criminal Code.
c) Guilty of aiding or instigating suicide contrary to s163 of the Tasmanian Criminal Code.
d) Guilty of murder contrary to s157(1)(a) of the Tasmanian Criminal Code.

4. David and Brian were out in a paddock on David's uncle's farm, fooling around with some old ammunition they had found in a nearby shed. Neither David or Brian were experienced gun users, and were not well educated on the operation of firearms. They faced each other with two guns in hand, pretending to have an old-fashioned Western shoot-out. Both pulled the triggers on their guns, which they believed were unloaded, but David's gun fired a bullet, and killed Brian instantly.

David has been charged with murder contrary to s157(1)(a) of the Tasmanian Criminal Code. According to the elements which must be established, what would your verdict be?

a) Guilty, because David's act of pulling the trigger was conscious and voluntary.
b) Not Guilty, because David's act was not directly and immediately connected to Brian's death.
c) Guilty, because David was responsible for the act which caused Brian's death.
d) Not Guilty, because there was no intention to kill at the time of the relevant act.

5. Robert was holding up a service station. He had entered the service station holding a loaded gun, with a balaclava over his head, and demanded that the employee behind the counter (Jared) empty the cash register. Jared started filling bags with cash for Robert, while Robert faced him, pointing the gun at him, with his finger on the trigger. Suddenly, Jared accidentally knocked over a counter display, sending packets of lollies flying everywhere, and making a very loud bang. Startled by the sudden noise, Robert jumped, and pressed the trigger on the gun in a reflex movement. The gun went off, and Jared was shot dead.

Robert has been charged with murder contrary to s157(1)(a). Which of the following elements of the crime is going to be the <u>most difficult</u> for the Crown to establish?

a) That Robert's act is directly and immediately connected to Jared's death.

b) That Robert himself was responsible for the act which caused Jared's death and not someone else.
c) That Robert's act which resulted in Jared's death (pulling the trigger) was a voluntary and conscious act.
d) That Robert intended to rob the service station.

6. Melissa and John have been married for ten years, but John has become physically violent towards Melissa over the past twelve months. One night, John came home from the pub, in a drunken and violent rage. He threatened Melissa with physical violence, and chased her around the house. Melissa picked up a knife in the kitchen, and told John that if he came any closer, she would kill him. John moved towards Melissa, and she stabbed him three times in the chest, killing him.

Melissa has been charged with murder contrary to s157(1)(a) of the Tasmanian Criminal Code. Are all of the required elements for this section present?

a) No, because it cannot be established that Melissa intended to kill John when she committed the act of stabbing him.
b) Yes, all the elements of s157(1)(a) can be established.
c) No, because it cannot be established that Melissa is responsible for the act causing John's death.
d) No, because it cannot be established that Melissa's act of stabbing John is directly and immediately connected to his death.

7. Ellen has been ill with terminal cancer for 2 years now, and her quality of life is very poor. Lisa, Ellen's granddaughter, went to visit Ellen in hospital recently. As Lisa was leaving, Ellen requested that Lisa help her with her night-time medication because the nurses sometimes took a long time to come around with the painkillers. Ellen thought to herself that now would be a good time to end her life. At Ellen's request, Lisa undid a bottle of pills which Ellen was unable to undo herself, and gave them to Ellen with a glass of water. As Lisa watched, Ellen took 6 pills, explaining that her pain was very bad at the moment so she was taking a larger dose. Lisa left after Ellen fell asleep. Ellen was found dead later on that evening.
Lisa has been charged with aiding or instigating suicide contrary to s163 of the Tasmanian Criminal Code. Which of the following would be the <u>most appropriate</u> verdict?

a) Guilty, because Lisa has clearly helped Ellen carry out the acts which resulted in her suicide.
b) Guilty, because Lisa was present at the time when the acts resulting in suicide were committed, and she assisted Ellen in committing them.
c) Not Guilty, because Lisa did not intentionally assist Ellen in carrying out the acts which resulted in suicide.
d) Not Guilty, because Ellen did not intentionally commit suicide.

8. Damien owed Mark some money, so Mark broke in to Damien's house to retrieve what he owed him. Expecting the house to be empty, Mark was surprised to encounter Damien's brother Phil. Knowing Phil had seen his face, and would go straight to the police, Mark decided he had no choice but to kill him, so he dragged him out into the bush and bashed him over the head with a plank of wood. Miraculously, Phil survived the bashing, but Mark believed Phil to be dead.. Mark

then carried Phil (who he believed to be dead), to a nearby river to dispose of the 'body'. He dropped Phil in to the river, where he drowned. Forensic evidence has confirmed that Phil's death occurred as a result of the drowning, not the bashing.

If Mark is charged with murder contrary to d157(1)(a) of the Tasmanian Criminal Code, which of the following elements of the crime is going to be the <u>most difficult</u> for the Crown to establish?

a) That Mark's act (dropping Phil in to the river) was the cause of Phil's death.
b) That Mark himself was responsible for the act causing Phil's death, and not someone else.
c) That Mark's act of dropping Phil into the river was voluntary and conscious.
d) That Mark committed the act (dropping Phil in to the river), with the intention of causing Phil's death.

9. George lived on a property in the country, and often had trouble with trespassers. One night, George heard some noises outside the house, and said to his wife, "If it's those kids again, I'll kill them". He went outside, picking up an axe from the porch on his way, and went to find the source of the noise. Soon, he came across a middle aged man, who was wandering aimlessly around the property. George came up behind him, and struck him over the head three times with the axe, killing him.

If George is charged with murder contrary to s157(1)(a) of the Tasmanian Criminal Code, what would your verdict be?

a) Not Guilty, as George was simply defending his property.
b) Guilty, as all the elements of s157(1)(a) can be established.
c) Not Guilty, because George was not acting voluntarily and consciously.
d) Not Guilty, because George did not intend to kill the man.
10. Dr Smyth was treating Carl, a patient suffering from terminal bowel cancer. Although Carl and Dr Smyth had never discussed the possibility of suicide, Dr Smyth couldn't imagine how anyone in Carl's condition could want to continue living. Carl was on a morphine drip, and one night, Dr Smyth decided he couldn't stand to see Carl suffering the way he was. He turned the drip up to a high level, and immediately left the room. Carl was found by one of the nurses early the next morning, deceased. It was determined that Carl died at 2:30am, three hours after Dr Smyth left the hospital.

Dr Smyth has been charged with aiding or instigating suicide contrary to s163 of the Tasmanian Criminal Code. According to the elements which must be established, what would your verdict be?

a) Guilty, because Dr Smyth has clearly intentionally assisted Carl to commit suicide.
b) Not Guilty, because Dr Smyth was not involved in any discussion with Carl about suicide.
c) Not Guilty, because the patient in this case did not actually commit suicide.
d) Not Guilty, because Dr Smyth was not present at the time of death.

Part C of this questionnaire requires you to reach a verdict for each of the charges, and complete some ratings scales. [13]

1. What is your verdict on the charge of murder (contrary to s157(1)(a) of the Tasmanian Criminal Code)? (Circle one)

I find Jane Mitchell **not guilty** I find Jane Mitchell **guilty**

2. What is your verdict on the charge of instigating or aiding suicide (contrary to s163 of the Tasmanian Criminal Code)? (Circle one)

I find Jane Mitchell **not guilty** I find Jane Mitchell **guilty**

3. How confident are you that your verdict is correct? (circle a number)

1 2 3 4 5 6 7
Not very Confident Moderately Confident Very Confident

4. How difficult did you find it to understand the law in this case? (circle a number)

1 2 3 4 5 6 7
Not very Difficult Moderately Difficult Very Difficult

5. How difficult did you find it to arrive at a verdict? (circle a number)

1 2 3 4 5 6 7
Not very Difficult Moderately Difficult Very Difficult

6. How useful did you find the trial transcript? (circle a number)

1 2 3 4 5 6 7
Not very Useful Moderately Useful Very Useful

7. How useful did you find the chronology of events? (circle a number)

1 2 3 4 5 6 7
Not very Useful Moderately Useful Very Useful

8. How useful did you find the offence criteria? (circle a number)

1 2 3 4 5 6 7
Not very Useful Moderately Useful Very Useful

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[13] Part C of the questionnaire for participants in the own notes present-provided notes present condition is shown here, to demonstrate the full range of utility ratings participants were required to make. As explained in the Experiment 1 Method section, questions regarding the utility of the provided notes were not included in the questionnaire for participants in the own notes present-provided notes absent condition, just as questions regarding the utility of own notes were not included in the questionnaire for participants in the own notes absent-provided notes present condition.

9. How useful did you find the verdict flowcharts? (circle a number)

1 2 3 4 5 6 7
Not very Useful Moderately Useful Very Useful

10. How useful did you find the written judicial instructions? (circle a number)

1 2 3 4 5 6 7
Not very Useful Moderately Useful Very Useful

11. How useful did you find your own notes in answering the questions about the facts of the case? (circle a number)

1 2 3 4 5 6 7
Not very Useful Moderately Useful Very Useful

12. How useful did you find your own notes in answering the questions about the law of the case? (circle a number)

1 2 3 4 5 6 7
Not very Useful Moderately Useful Very Useful

13. How useful did you find your own notes in answering the novel scenarios? (circle a number)

1 2 3 4 5 6 7
Not very Useful Moderately Useful Very Useful

Appendix D

Experiment 1 Provided Notes

Trial transcript.

Clerk of Court: Jane Mitchell, you are charged on the first count that you, on the 2nd of August 2002 at Newtown in the State of Tasmania, murdered Stephen Taylor, contrary to section 157(1)(a) of the Tasmanian Criminal Code. How do you plead?

A: Not guilty.

Q: You are further charged in the alternative that you, on the 2nd of August 2002 at Newtown in the State of Tasmania, instigated or aided Stephen Taylor to suicide, contrary to section 163 of the Tasmanian Criminal Code. How do you plead?

A: Not guilty.

Opening Statements:

Crown Prosecutor (Louise King): Thankyou, Your Honour. The indictment contains two charges; the first alleges that the accused, Ms Mitchell, murdered Stephen Taylor. That is charge one. In the alternative, the accused is charged that she instigated or aided Mr Taylor to suicide.

I represent the Crown in these proceedings and it is the Crown who has the obligation of proving the accused's guilt and proving it beyond reasonable doubt. Not only does guilt have to be established beyond reasonable doubt, but in the process, each of the elements of the offences has to be established beyond reasonable doubt. If the Crown fails to do this, the accused is entitled to be acquitted. That is fundamental.

The accused, ladies and gentlemen, does not have to prove her innocence. She is presumed innocent.

Whatever views you hold about assisted suicide or euthanasia, it is critical that you must not permit them to intrude into your sworn duty to determine whether or not criminal offences have been committed. To assist another to suicide is a criminal offence just as taking a life with intent is a criminal offence.

So, as I said, the first charge of the indictment charges that the accused murdered Stephen Taylor; that is, she did an act with the intention of killing Mr Taylor and her act in fact caused Mr Taylor's death. The second charge is that she instigated or aided Mr Taylor to suicide. That means that the accused was present when Mr Taylor committed suicide, and that this accused intentionally encouraged Mr Taylor to commit the acts causing his own death or expressed agreement and approval by her words or conduct.

During 2001, the deceased, Mr Taylor, was diagnosed as suffering from Motor Neurone Disease. This is a disease that affects the sufferer's mobility and capacity to speak. It is progressive, degenerative, and there is no known cure.

At the time of his diagnosis, the deceased was in a relationship with the accused. They were lovers, they had been for some years. They jointly owned and operated a florist business. The progress of Mr Taylor's disease was monitored and

maintained under Dr Greene's care, the treating doctor, and the accused was the deceased's full time carer. The accused also maintained the florist business.

On the first of February 2002 at one of Dr Greene's visits to Mr Taylor's home in Newtown, Mr Taylor informed Dr Greene of his intentions to organise his own death. So, seven or so months before Mr Taylor died, there were open discussions about assisted suicide.

On 30 April 2002, Mr Taylor executed a Will. Ms Mitchell, the accused, was the principle beneficiary under that Will. On May 2 2002, a month or so later, Mr Taylor recorded himself on a video, where he talked about his views, at that time, regarding his condition, how he was suffering and how he wished to bring an end to his life.

On 10 July 2002 the accused rang Mr Taylor's daughter, Sister Christine Taylor, who was living in Dublin, Ireland. She was informed that her father was extremely unwell, and it was suggested that she make a visit to see him. She arrived in Sydney on July 15 2002.

A few days after Sister arrives to visit her father there is an open discussion between the deceased, the accused and the daughter about Mr Taylor's suicide plans. Sister is a member of an order of Nuns, and has strong personal and religious based views as to the sanctity of life. She expresses those views openly to her father.

Something very important happens on the Crown case three days after that conversation. That is, Mr Taylor changes his mind. He has been affected very much by his daughter's reaction, and in deference to her and her faith, he says he has changed his mind and he won't go through with the planned suicide.

Shortly after this, Mr Taylor decides he wants to have a birthday party and that party is convened or planned for August 2nd, some week or so later. The party started about four in the afternoon and most people were gone within a couple of hours. The last guest to leave was Sister. The deceased very simply bid his daughter good night as she departed, leaving only the accused in the deceased's company.

What happens between 6.30pm and about 9.45pm is sourced solely from the accused. She told police that in effect, Stephen, said that this was a good time to go, that he intended to take his own life. He asked to be put to bed. He asked to be provided with some sedative, Valium, under prescription from Dr Greene. He was given it, and according to the accused, the deceased asked to be given the Exit-Bag or E-Bag. This is a fairly simple device; it is a plastic bag with an elasticised opening. The person wanting to commit suicide is intended to take a heavy sedative dose, put the bag over their head and hold it open. And then when the person lapses into unconsciousness because of the drugs taken, their hand slips away, the bag's elasticised opening closes and the oxygen runs out; that is how the bag is intended to be used. It is available from a group called the Exit Group. The design of the bag is such that the person wishing to take their own life can do so themselves, without assistance

Ms Mitchell, the accused, leaves her partner's bedroom, and returns a couple of hours later to find Mr Taylor, deceased.

The Crown intend to prove the first count on the indictment by establishing to your satisfaction that this accused made the scene appear as if a suicide had taken place. It is the Crown case that this accused was motivated by mercenary motives to kill Mr Taylor, that she used the opportunity of the party to ply him with liquor, that she overdosed him with Valium and that she slipped the E-Bag over the deceased's face.

The Crown will establish to your satisfaction, we submit, that the deceased was incapable, physically incapable of placing the bag over his head or over his face such as to suffocate himself.

We will ultimately establish that when Mr Taylor retracted his intention to suicide to his daughter, he had in fact changed his mind.

In the event that you are not satisfied that the Crown has established murder, the Crown says that you will at the very least find established beyond reasonable doubt that this accused instigated or aided Mr Taylor's suicide; that she was present when the deceased committed the act causing his own death, sedation followed by putting the bag over his face, and that she assisted by opening the pill container, containing the sedatives, and she obtained the bag and brought it to the bedside. If you find those facts established, you would be bound to find the second count proved. Thank you.

Defence Counsel (Mr Wilson): Thank you, your Honour. I'm only going to speak to you now very briefly on just some key aspects of the evidence on which the defence in this case will be relying.

The young woman whom we represent is a woman who has never been in any sort of trouble with the law in her life, and yet against her there is one of the most serious charges known to be levelled, murder. Mr Taylor clearly formed an intention to commit suicide because of his desperate condition. The Crown, however, wants you to believe that he later changed his mind. When he died, therefore, the prosecution wants you to find that he could not have wanted to do it, so it must have been done by someone else, and the accused, the prosecution says, has to be the someone else.

You will hear evidence that when Mr Taylor explained his intention to his daughter, she was very upset and shortly afterwards, a couple of days or so, he told her that he changed his mind. She was overjoyed at that. But you will also hear in the evidence that he had prepared a number of things to assist his suicide. He had obtained the bag which you have heard about, he had written a farewell letter to her, and he had made a videotape expressing his final wishes; it will be obvious to you when you hear that evidence that although the prosecution wants you to accept that he changed his mind, he kept the bag, he kept the letter, and he kept the videotape.

The other important element in the case is the proposition that he could not have done it himself anyway, he must have had some physical assistance. This is what is relied on by the prosecution in support of the charge of assisting. He must have been assisted they say, because he could not have done it himself.

I won't address in detail now the medical evidence you will hear on that, but that will be evidence, not of fact, but of opinion, and an opinion which in the end the defence will say to you is the sort of opinion on which even the best experts can disagree.

Those, members of the jury, are two key aspects of their case. That, on behalf of Ms Mitchell, is all that I wish to put before you as key aspects on which the defence will be focusing. Thankyou.

Crown Witness 1: John Reid

Examination in Chief

Crown Prosecutor: Could you please state your full name and rank for the record.
A: My name is John Reid, and I am a Detective Inspector.

Q: On the second of August 2002, did you at about 10.35pm that evening as a result of a telephone call, go to 100 Crescent Lane, Newtown?
A: Yes, that's right. Sister Christine, Dr Greene and the accused, Ms Mitchell, and the body of the deceased were all at the house. I asked what had happened, and Sister Christine pointed at the accused and said, "she caused my father's death".

Q: What did Ms Mitchell say?
A: She stood still and made no reply. I then said, "how did he die?" and she moved to the end of the bed, raised a bed cover slightly, exposing a plastic bag which I recognised as an Exit Bag.

Q: Did you find in the bedroom a videotape which was labelled on the spine, "my last testament."?
A: Yes, we found it on the mantel piece.

Q: We have here a copy of the transcript of that video – would you read it out for me please?
A: Yes. "By the time anyone sees this, I will be dead. I am recording this now while I still can. I am deteriorating rapidly. It isn't any sort of life and I want to end it while I still have some dignity left. Because of the cruel laws of this country no one is allowed to help me die peacefully, so I am forced to do it myself. Christine, my beloved daughter, please forgive me. And please forgive my faithful partner, Jane, for her complicity. I've arranged it so she is not part of it and can't be charged with anything. Goodbye and thank you all for your love and help."

Crown Prosecutor: Thank you. That is the evidence of this witness.

Cross-Examination:

Defence Counsel:. Detective Inspector Reid, is it true that Sister Christine, Mr Taylor's daughter, had told you some things about Mr Taylor's Will?
A: Yes, shortly after I arrived at the house.

Q: You didn't ask her that though, did you? She just came out and told you that, didn't she?
A: I was asking her some general background questions when she mentioned those matters.

Q: But you had not mentioned a Will yourself, had you?
A: No.

Q: You also said to Ms Mitchell in your first interview with her that the doctor had said that Mr Taylor didn't have the strength to put the bag over his head; do you remember if you used those words "over his head"?
A: Yes.

Q: What you had in mind in asking that question was Mr Taylor putting the bag literally over his head, down around his neck?
A: Yes.

Q: And it was that specific action that the doctor had told you he didn't believe Mr Taylor had the strength to do?
A: I can only say what the doctor said.

Q: You had not at that stage raised with the doctor what Ms Mitchell told you in the interview had happened and that is that the bag was only over his face, and not completely over his head?
A: That's correct.

Q: As a result of this matter you made some enquiries into Ms Mitchell's background, and you have certainly established to your own satisfaction that she has never been in any sort of trouble with the law in her life?
A: Yes, no criminal convictions.

Q: Thank you.

Witness retired and excused.

Crown Witness 2: Dr Simon Greene

Examination in Chief

Crown Prosecutor: Could you please state your full name, and explain your medical qualifications for the court?
A: Certainly. My name is Simon Greene. I hold a Bachelor of Medicine, and I am a legally registered medical practitioner in this state. I have practiced as a GP for around 20 years, and in that time I have been the attending physician for many Motor Neurone Disease patients.

Q: So, you had a doctor/patient relationship with the deceased in this case?
A: Ah yes. I had known him for many years.

Q: Mr Taylor was diagnosed in 2001 with Motor Neurone Disease, is that correct?
A: Yes.

Q: Is there any known cure for that condition?
A: No, it's a progressive destructive disease of muscle and neuron and normally a relentless progress to death, usually within two to three years.

Q: From the time when Mr Taylor was house bound, around September 2001, was he in need of constant care in your assessment?
A: Oh yes, he needed assistance with almost all daily activity. At least by that February when I saw him, he would not have been able to clean his teeth on his own. He had difficulty getting around so, yes, he would have needed assistance with eating, and with cleaning himself.

Q: Do you recall a visit in February of 2002 where there was a conversation about euthanasia?
A: Yes, I recall that very clearly.

Q: Who was it that actually raised with you the question of easing the passage of death?
A: I believe it was Ms Mitchell. She said something like, is there anything we can do to hasten the end? Or make it easier? The first thing I did was to ask Stephen what he felt about this.

Q: What did he say?
A: Well, he was still able to speak quite clearly at that stage and he was certainly in sound mind and he said; I can't go on like this. Or; I can't continue like that. He seemed interested in my opinion.

Q: According to your records, you attended Mr Taylor at his home on the 5th of July 2002. Can you give your assessment of his physical condition at that time?
A: Well, I was doing a house call at lunch time and Mr Taylor was receiving some food at that stage and I was shocked that he was needing assistance with absolutely everything. He was profoundly weak. He was not in the chair but in bed, at that stage I think. He was being supported by a neck brace, and was being offered his food via a straw rather than to his lips, but he was conscious and alert and he knew what was happening.

Q: Do I understand you to say then, doctor, that in your view as at July 2002, Mr Taylor could not lift his hand to his face?
A: Well, he may have been able to lift his hand to his face but he certainly couldn't have had anything in his hand, because he was so weak.

Q: Before we go to 2 August, there is one thing I need to ask you. Did you prescribe medication of any kind?
A: Yes, I did. I prescribed some Valium for sedation and so he had it available to him at all times to assist with relaxation and for his sleep. He would have been taking one or two a day, under my orders.

Q: So, turning now to the evening of the 2nd August 2002. When you arrived at the deceased's home following Jane's phonecall, you found Mr Taylor in bed and in your view, when had he had died?
A: Well, I examined the body, and I determined that Mr Taylor had passed away within the previous two hours.

Q: No further questions.

Cross-examination:

Defence Counsel: Doctor, you observed on a number of occasions Ms Mitchell taking care of Mr Taylor, didn't you?
A: Yes, that's correct.

Q: She did it extremely well, didn't she?
A: Yes, I believe she did.

Q: Your assessment of Mr Taylor on the 5th of July which you just described was by way of your professional opinion, wasn't it?
A: Yes.

Q: And you do acknowledge, don't you doctor, that in matters of professional opinion, even experts sometimes disagree?
A: Yes, certainly.

Q: When you observed Mr Taylor on the 5th of July, he was just doing his normal daily activities, correct?
A: Yes.

Q: You didn't ask him to do anything for the purpose of demonstrating to you, did you?
A: Well, no, because he was already doing it. He was being fed and feeding himself as much as he could, so I was able to observe that interaction.

Q: So you didn't say to him or no one said to him, while you were there, would you please summon all your concentration and all your strength for just one last desperate effort and see what you can do?
A: No, I didn't ask that.

Q: And if he had been asked to do that, and he had tried to do that in response, it's most likely, isn't it, that he would have been able to do more than you saw him do on that day?
A: Well, he may have done a little more, yes, with supreme effort, it's possible.

Q: Doctor, to put it briefly, it is possible that you are in error in your estimate of how much he was capable of doing, isn't it?
A: Well, yes, I may be in error to a degree, certainly.

Q: To a substantial degree?
A: Well, look, I could be wrong to a certain degree, but he certainly couldn't have run across the room or anything like that. In terms of what he could do with his hands, you're correct, I could be in error to a certain degree.

Q: Now, if I understood your earlier evidence correctly, you don't believe that on the day you saw him, he would have been capable, for example, of holding a glass in his hand, his hand being at about mid chest height. Is that correct?
A: Yes, I didn't think he would be capable of that.

Q: Would you have a look please at photograph number two Dr Greene. This photo was taken at Mr Taylor's birthday party, on August the 2nd (Handed.) Now, you see in that photo, Mr Taylor?
A: Yes.

Q: And you see him holding a glass, independently, out from his body?
A: Well, yes, he appears to be.

Q: He is holding it slightly above mid-chest height, isn't he?
A: Well, he is in a chair but, yes, he is holding it at mid chest height.

Q: When you saw him on 5th July, you didn't think he would be capable of doing that then, let alone on the 2nd August, did you?

A: Well, no, I didn't, I suppose.

Q: Doctor, on the night when you attended and found Mr Taylor dead, you were asked by the police your opinion as to his ability to put an E-Bag over his head, weren't you?
A: Yes, that's right.

Q: Meaning fully over his head was how you understood it, wasn't it?
A: I understood it to mean the bag would have gone up to the top of his head and back down the other side, yes.

Q: And you gave the police the opinion that you didn't think he could have done that?
A: That's right.

Q: You were not considering that proposition as to whether he could have got the bag over his face alone, were you?
A: That's true, I wasn't considering that.

Q: That would take rather less effort, wouldn't it?
A: Look, I'm really not sure about that. You would have to still raise it to the same height and it's just not my field. It only takes slightly more effort to get over the top, as to get it up to the top. I'm a doctor, not a physiologist.

Q: Is it fair to say this is outside your area of expertise?
A: To say whether it would be easier, yes.

Q: Well, do you agree with this: That there would be a very significant difference between the amount of effort required to get the bag fully over his head in the upright position, as compared to the amount of effort to get the bag over his face once his head had fallen forward.
A: Yes, I would agree with that proposition.

Q: Let's turn to Valium or Diazepam for a moment. You prescribed that in five milligram tablets?
A: That is correct.

Q: The deceased had a very high level of that in his blood at the time of his death, requiring an ingestion of something between 20 and 40 of those five milligram tablets?
A: So I have been told.

Q: Those tablets are not easily soluble, are they?
A: No, they don't dissolve in water. In fact, they don't really dissolve easily in any liquid.

Q: If they're crushed up they're extremely unpalatable, very unpleasant to taste?
A: I understand people have tried that and they've told me it tastes ghastly.

Q: So it is not at all easy to imagine any way in which anyone could ingest that number of those tablets unless it was voluntary, that is correct, isn't it?

A: Yes, I think that is fair to say.

Q: You can't force that many tablets down an unwilling person's throat, can you?
A: No, not really.

Q: Thank you.

Re-examination:

Crown Prosecutor: As far as the design of the E-Bag is concerned, it is correct, is it not, that it is essential that the bag be draped over the head or face to create a seal, is that right?
A: Yes, that's my understanding of the principle of the device.

Q: My learned friend Mr Wilson spoke about the apparent unpleasant taste of Valium when crushed; would you expect whiskey to cloak or cloud the unpleasantness of the taste were the tablets crushed in whiskey?
A: Look, I really couldn't answer that directly.

Q: No further questions.

Witness retired and excused.

Crown Witness 3: Phillip Butler

Examination in Chief:

Crown Prosecutor: Could you please state your full name, and list your medical qualifications for us?
A: My name is Phillip Butler. I am a legally registered medical practitioner in this State, I hold a Bachelor of Medicine and Bachelor of Surgery, I am a member of the fellowship of the Royal College of Pathologists of Australasia and I also have a diploma of medical jurisprudence in forensic pathology.

Q: Let's turn to the post mortem you conducted on the deceased. What was the result of your examination of the body?
A: I made observation, of the musculature, particularly the upper and lower limbs, and observed that there was considerable wastage of muscles in that region.

Q: The deceased's blood alcohol reading from the blood samples taken was 0.08, is that so?
A: That is correct. That would be considered a mid range blood alcohol content.

Q: The concentration of Valium in the blood was what?
A: It was 2.9 milligrams per litre of blood.

Q: Is that concentration a modest range or a harmful range, can you say?
A: Well, in a normal healthy person we would consider a normal range to be somewhere between 0.05 up to 2. So this level is above a normal therapeutic level. A toxic range would be considered to be 3 up to 14. Death doses associated with Valium have occurred at levels above five.

Q: Insofar as the concentration of Valium is concerned, how many individual tablets would need to be ingested to give the reading as reported to you?
A: Well, to some extent it would depend on the person, how they absorb them, their build and so on, but relatively speaking, if we are talking about five milligram tablets then 20 to 40 tablets would be required to produce this blood level.

Q: Having regard to the histological examination of the muscle tissue, and your observation of the limbs macroscopy, by simply looking and making your own visual assessment are you able to predict whether or not Mr Taylor, the deceased, would have been able to lift his arms to chest height prior to death?
A: It is very difficult to make a judgment about how strong a person would be by examining their muscle after death. In accuracy terms, it is sort of like trying to predict whether a sheep was stronger than a lamb chop. However, my examination revealed that there was severe diminution changes which means there was severe loss of nerves applying to the muscles, indicating there would have been severe loss of strength. I think…I think there would have been profound weakness and I think the deceased would have found it profoundly difficult to bring his arms up to chest level. However, in fairness I must say I do not think it would have been impossible.

Q: Let's turn now to the E-Bag. Assuming the bag was placed either over the head or over the face such as to create a seal around the neck, over what period of time would you expect death to occur?
A: There are two considerations here. Firstly, if the bag is sealed either over the face or entirely over the neck, there is only a limited amount of air inside that bag, so a person would breathe that air and eventually all the oxygen would be used up and that person would obviously die. It is difficult to predict in this case how long that would take but certainly less than half an hour and probably only a few minutes. However, the other aspect to consider is that it has certainly been documented in forensic cases that merely occluding the face, merely covering the nose and mouth with a plastic object, can actually result in extremely rapid, if not near instantaneous death.

Q: Are you able to clearly identify the cause of death in this case?
A: Yes, I am able to say that suffocation was the cause of death in this case, but we cannot tell if that was due to the bag being fully over the head, or merely occluding the face.

Q: Thank you very much.

Witness retired and excused.

Crown Witness 4: Christine Taylor

Examination in Chief:

Crown Prosecutor: Could you please state your full name for the record.
A: My name is Christine Taylor.

Q: Sister Christine, you are a Member of an order of nuns which operates in Dublin, is that so?

A: Yes.

Q: And you are Stephen Taylor's daughter?
A: Yes.

Q: When you first saw your father in July 2002, after you arrived in Australia, how was he?
A: I had never seen him look like that before. He had no use of his legs. He had lost most of the movement in his hands and arms. He required a brace to keep his head up. His voice was gone, virtually, like it was a whisper. He was mainly bed ridden or in a wheel chair.

Q: Now, a few days after your arrival you had a conversation with Ms Mitchell in your father's presence about assisted suicide? Can you tell the jury about that conversation?
A: Jane said to me that Stephen no longer wishes to live on in this condition. She then said that both of them had been attending a suicide group, looking at how he may end his life peacefully while he still can.

Q: Did you volunteer anything as to your own reaction or position on this question?
A: No, I was shocked, I couldn't say anything.

Q: Do you recall having a conversation with your father about any Will that he may have executed?
A: Yes, I asked him about the Will and I asked him if he would make a bequest on my behalf to the Church. Then he said that his Will did provide a small bequest to my sisterhood. He went on to say that the bulk of his estate would go to Jane.

Q: Now, do I understand Sister, that you were upset at your father's plans with Ms Mitchell to bring about the end of his life?
A: Oh, yes. I told him that I must do…that I must do everything in my power to stop him from doing it.

Q: Some time after that was there a further conversation concerning the question of the assisted suicide?
A: Yes, after a few days, dad asked to speak with me. Jane was there and dad basically said, "I haven't taken into account your feelings or your position, I don't want to cause you pain so we have reconsidered". I don't remember exactly what I said, but I was very happy.

Q: Was there anything else said in that conversation about the Will?
A: Yes, he said that he also…he also had news that would make me even happier which was that he planned to change his Will and increase the bequest to the Church.

Q: Now, in the intervening period between that conversation and your father's death, a decision was made to have a birthday party for him on August 2?
A: Yes.

Q: Alcohol was consumed at the party?
A: Mm.

Q: Are you able to say how much your father had to drink?
A: Jane was refilling his glass quite often. He was drinking straight whiskey. I would guess he had at least…I would say…four whiskeys.

Q: Did you say anything about this to either your father or to Ms Mitchell?
A: Yes, I said to Jane that she was encouraging my father to drink too much.

Q: Now, can you say about what time you left the party?
A: Approximately six o'clock; I waited until everyone else had left.

Q: Did you speak to your dad before you left?
A: Yes, I did. I hugged him and he said that he loved me and then he said "I'm proud to be your father". And then he said "good night my little girl".

Q: At about quarter to ten in the evening after you left, you received a telephone call from Ms Mitchell and she said words to the effect 'at last your father is at peace'?
A: Yes. I drove straight to Dad's house; I arrived there hat around 10 o'clock. I said to Jane, how did this happen? She just lifted the edge of the blanket toward the end of the bed and I saw a plastic bag thing.

Q: And you said to Ms Mitchell; "he couldn't have done this by himself. You have done it" is that right?
A: Yes.

Q: Do you remember what she said when you said that?
A: She said; I understand how you feel but it is what he wanted.

Q: Then she handed you a letter?
A: Yes.

Q: Could you read that letter aloud for the jury now?
A: "My dear Christine, I love you and always have. You will be angry with me but I need you to understand that I don't want to go on. I must end my life while I can do it alone and I hope that I've not left it too late. I know you will grieve about not saying good-bye. I'm sorry but it seems like the only way. I hope you find…I hope you find in your heart to befriend Jane. Without her I would…I would not have had the will to live, or enjoy these last few years. Goodbye my beloved daughter." There is a hand inscription 'dad' with some cross marks.

Q: Thank you. No more questions.

Cross-examination:

Defence Counsel: Sister Christine, one of the things you realised after the event, which you recorded in a statement to the police, was that when you said good-bye, your father said good-bye to you that night, without saying anything about seeing you tomorrow? The reason you recorded that, that way, is that normally he did say something about seeing you tomorrow?
A: Sometimes he would say it and sometimes he didn't.

Q: You disapproved of your father's relationship with Ms Mitchell, didn't you?

A: No. It did not accord with my religious beliefs, but I told dad that I would support him in the decision that he made and it would not change how much I loved him.

Q: You certainly didn't approve of his plan to end his life, did you?
A: Absolutely not.

Q: You told your father very clearly that you were upset about that plan, didn't you?
A: Yes, I strongly disagreed with it. I was incredibly shocked when he told me that that's what he was planning.

Q: Your father didn't like to cause you pain, did he?
A: No, just as any father wouldn't like to cause their child pain.

Q: Now, let's talk about your father's Will. Your father had a successful, and quite valuable florist business, didn't he, which he originally ran with your mother?
A: Yes.

Q: As you understood it that was the bulk of the estate?
A: Well, yes. That was his business and that's where he put his investment.

Q: When you had that discussion about the Will which you have already mentioned, Jane said something of which you have not so far given evidence today, didn't she?
A: Yes, with regard to the divisions of the Will. She said that the florist business was going to come to her even without the Will because she was…well…she and my dad were joint owners of it and that's how they'd planned it.

Q: So the bulk of your father's estate was going to Ms Mitchell, quite apart from the Will as you understood it?
A: Yes.

Q: So the change you were expecting your father to make to his Will, affected only a small part of his estate?
A: Yes.

Q: Now, when Jane phoned you to tell you of your father's death, you did not want to believe that your father had killed himself, did you?
A: I couldn't believe that he would have done it.

Q: And you did not want to believe that your father had deceived you when he told you he had decided to abandon that plan, did you?
A: He had made it plain to me that he had changed his mind about the whole suicide issue.

Q: And you believed him?
A: Absolutely.

Q: And you don't want to believe, even now, that there is any possibility that he was deceiving you when he said that, do you?
A: I don't believe that he would deceive me.

Q: No further questions Your Honour.

Witness retired and excused.

Defence Case:

Defence Witness 1: Jane Mitchell

Examination in Chief:

Defence Counsel: Please state your full name for the record.
A: My name is Jane Mitchell.

Q: Jane, when did you find out that Stephen was terminally ill?
A: About two years ago. I became Stephen's full time carer when he couldn't do things for himself anymore.

Q: Let's talk about the birthday party you had for Stephen. Who attended the party?
A: Our friends and his daughter, Christine.

Q: When did the guests leave?
A: Umm, maybe around six?

Q: What happened then?
A: Well, Stephen wanted to go to bed, so I wheeled him to the bedroom, and helped him into bed. Then he said to me that he had decided tonight was the night, which I took to mean that he wanted to end his life like he had talked about. His Valium was on the bedside table, and I just administered his regular dose like I always do.

Q: Stephen wrote a letter to his daughter a few weeks prior to the birthday party, didn't he?
A: Yes, Stephen wrote the letter just before Christine came back to Australia, and I printed it out for him. After I had printed it, Stephen asked me for the letter and he signed it.

Q: Now, tell us a little about your dealings with the Exit group.
A: Well, after Stephen had made his decision to end his life on his own terms, he and I discussed his options, and we looked into various groups or organisations which might be able to help us. We came across the Exit group on the internet, and Stephen asked me to arrange a visit and I did. They came over. He was keen and he asked me to organise a bag, so we ordered one together.

Q: And when you put Stephen to bed that night, where was the Exit Bag?
A: It was on the bedside table.

Q: Tell us in your own words, what happened next?
A: Stephen asked me to leave the room, and I did. I went back downstairs, and started to tidy up the mess left from the party; picking up glasses, washing up, dealing with the leftover food and such. About an hour or so later, I went back up to Stephen's room to check on him, and that's when I found him…

Q: And what did you observe?
A: Stephen appeared to be dead, as far as I could tell; he had no pulse, and the E-Bag was over his face.

Q: The Exit Bag was found in the bed. How did it get there?
A: I took it off because I didn't want Christine to have to see it, so I moved it and put it under the blanket.

Q: When she arrived, what happened?
A: We went into the bedroom. And when she realised he was dead she broke down into tears and that's when I just gave her the letter.

Q: So, Jane, let's just confirm: at no point did you assist Stephen in using the Exit Bag, taking more Valium, or doing anything that would result in his suicide?
A: Absolutely not. He asked me to leave the room, which I did out of respect for his wishes. When I left the room he was in bed, and alive. When I returned an hour or so later, he was dead.

Q: Thank you. No further questions Your Honour.

Cross Examination:

Crown Prosecutor: Ms Mitchell, the doctor alleges that Stephen was not capable of using the bag to cover his own head without the help of someone else. What do you say about that?
A: I don't know what to say to that, except that I didn't help him.

Q: And isn't it also true that Stephen wanted to alter his Will in a week or so to increase his bequest to Christine's Church, therefore decreasing the size of the estate left to you?
A: Yes. It was Stephen's Will. He could do whatever he wanted with it.

Q: You understand that the business becomes yours alone on his death?
A: Yes.

Q: It's a fairly profitable business, isn't it?
A: Yes, it is.

Q: The pathology report conducted indicates that at the time of the deceased's death, he had a blood/alcohol level of 0.08. That's quite a high amount of alcohol, wouldn't you agree?
A: I suppose so.

Q: The pathologist's report also indicates a very high level of Valium: 2.9 mg/ltr. How do you think this was so high if you only administered the usual night-time dose?
A: I don't know.

Q: No further questions.

Witness retired and excused.

Closing Statements:

Defence Counsel: Thank you, Your Honour. Ladies and gentlemen: one very quick glance at this case quickly demonstrates that there are numerous gaps in the evidence: let me point some of these out for you. Number 1: the medical evidence as to what Mr Taylor was physically capable of is inconclusive to say the least. Not one of the witnesses was able to say with any certainty that Mr Taylor would not have been able to raise his hands up to his head. In addition, you have also heard evidence that Mr Taylor did not even need to get the bag up and over his head to succeed in his wish to suicide; had he just draped the bag over his face, this too could have resulted in suffocation. Number 2: the Crown have suggested that Mr Taylor changed his mind about his very strong wish to commit suicide, however, they cannot explain why then, Mr Taylor kept a copy of the goodbye letter to his daughter, why he kept the video explaining his desire to suicide, and why he kept the E-Bag, which can be used for no other purpose than to suicide. And number 3, the Crown have not produced a shred of evidence to suggest that Ms Mitchell remained in the room with Mr Taylor as he ended his life, and if she was not present, it is difficult to imagine how Ms Mitchell can be convicted of anything. All of this evidence is so inconclusive, it simply cannot be relied upon to prove anything beyond a reasonable doubt.

When this complete lack of evidence is considered in combination with the fact that the accused is a woman without any previous criminal record, and who has been a faithful and caring partner who has had to watch her lover deteriorate mentally and physically before her eyes, it is very difficult to imagine that anyone could be convinced of either of these charges beyond a reasonable doubt. Quite simply, the prosecution has failed to prove either the charge of murder, or the charge of instigating or aiding suicide beyond a reasonable doubt, leaving you with no choice other than to find Ms Mitchell not guilty on both counts. Thank you.

Crown Prosecutor: Thank you, Your Honour. Ladies and gentlemen of the jury. What you have heard here today is the story of a murder. Despite what Mr Wilson has tried to suggest, I'm sure you can see that the hard evidence in this case paints a very different picture. The medical evidence clearly proves beyond a reasonable doubt, that the accused intentionally caused the death of the deceased. Although the accused and the deceased had discussed the possibility of suicide, you have heard evidence that Mr Stephen Taylor changed his mind, that he no longer wished to end his own life. You have also heard medical evidence that Mr Taylor's ability to lift his hands above chest level was severely impaired, so much so, that it seems ridiculous to imagine a man who is suffering the later stages of Motor Neurone Disease, who has had a fair amount of whiskey, and has a large quantity of sedatives in his blood, being able to lift a plastic bag up and over his head and down over his face. According to that evidence then, you must conclude that since Mr Taylor was unable to accomplish this himself, someone must have helped him, and all the evidence points to that someone being the accused – Ms Mitchell. If this alone is not convincing enough, do not forget that Ms Mitchell was the principle beneficiary under Mr Taylor's Will, and would become a wealthy woman following Mr Taylor's death. If you accept this evidence beyond reasonable doubt, you must convict the accused of murder. If, however, you are not convinced beyond a reasonable doubt

that the accused murdered the deceased, you must, at the very least, be convinced that the accused instigated or aided Mr Taylor to suicide. It is very important for me to emphasise that no matter what you believe about euthanasia or assisted suicide, you must put it aside to make your decision; it is a crime to assist someone to suicide, just as it is a crime to murder someone – that is what you must remember when making this decision. Once again, the medical evidence clearly shows that Mr Taylor was incapable of getting the E-Bag over his head on his own – he must have had some physical assistance, and that assistance must have come from the accused. Therefore, by helping Mr Taylor take his own life, by assisting him with something he was physically incapable of doing himself, the accused has clearly aided Mr Taylor's suicide. Of that, there is no question. I therefore urge you to come to the obvious conclusion: that if the accused is not a murderer, she is at the very least guilty of instigating or aiding suicide. Thank you.

Judge's summing up.

His Honour: Members of the jury, the final statement of this trial is when I give you some directions about the law. It is my role to determine what the law is in this case, and explain it to you, but it is your role as jury members to decide the facts of the case and apply the law to determine if the accused is guilty or not. I must tell you again briefly, because the prosecution charges the accused, it is its obligation to prove the charge against the accused. It does not have to prove every little fact it alleges but it must prove the essential ingredients of each charge

The fact that the accused was charged does not mean anything; she is presumed to be innocent. So the presumption of innocence is in her favour. She need not prove anything, she need not disprove anything. The standard or the level of proof to be achieved by the prosecution in this case is beyond reasonable doubt. It is the highest standard of proof known to the law.

It is important for you throughout your deliberations to focus purely on the intellectual task of drawing conclusions from the evidence you have heard. It is an intellectual task, not an emotional one. That is hard to do in this sort of case but it is something that is very important.

Now, I want to tell you something about the elements of the crime of murder. Murder is committed when a person kills another by conscious, voluntary and deliberate act done with intent at the time to kill this person. So, in order to prove murder, an act which is directly and immediately connected with the deceased's death, and which can therefore be identified as the cause of death, must first be established. The expert pathology evidence in this case pointed to suffocation as the cause of death, so the relevant act here would be use of the E-Bag in suffocating Mr Taylor (either by putting it over his face alone, or over his head).

The matters which you must be satisfied of beyond reasonable doubt, in addition, are that the accused herself actually committed this act. And also, that the accused committed this act with the intention of causing death to the deceased. That is, the accused must have had in mind, or had the purpose or design to cause death at the time of committing the relevant act. So, in summary, in order to find the accused guilty on the charge of murder, an act which caused the deceased's death must first be established. That has been established in this case. You must then be convinced beyond a reasonable doubt first of all that the accused actually committed this act which caused death, and secondly, that the accused committed this act with the intention of causing death.

Now we come to the second charge. The second charge is an alternative charge and that is the count of instigating or aiding suicide. To convict on this charge, the matters that you have to be satisfied of beyond reasonable doubt are as follows: The first obviously is that the deceased committed suicide. The next question is, in that act did the accused instigate or aid him? To instigate or aid in this context means she did one of the281following things:

Either she in some way actually helped him to do it, to do what the deceased was doing that evening he committed suicide or, she intentionally encouraged him to do

it, or she intentionally expressed her agreement and support for it, or she intentionally282commanded him to do it.

Now, the important aspect of all that is that the law requires that for any of those positions, the accused must have been present at the time when the acts which caused the suicide were being committed, not some other time. So, for example, the fact that they somehow talked together about suicide previously and they got the bag from the Exit people, all that is just the setting in which this occurs. The real question for you on this charge is firstly, was there suicide? Then, to prove that the crime of instigating or aiding suicide has been committed, the prosecution must prove beyond reasonable doubt first, that the accused was present, physically present at the time when the acts which resulted in suicide were being committed, not necessarily at the time of death but at the time when the acts were committed. And if she was present then you have to consider what she did, and she has got to be proved to have done one of these three things; intentionally help, or intentionally encourage by words or conduct, or express her agreement and her support.

I think that probably covers all the aspects of the law that you need to know in relation to these particular charges. Thank you. You may retire.

Chronology of events.

1st February 2002:	Dr Greene's visit. First knowledge of peaceful death intentions.
30th April 2002:	Date of Stephen Taylor's will.
2nd May 2002:	"Attesting video" and farewell letter to Christine created.
5th July 2002:	Dr Greene's visit. Immobility assessed.
10th July 2002:	Jane Mitchell calls Sister Christine in Dublin.
15th July 2002:	Sister Christine to Sydney.
18th July 2002:	Stephen talks to Christine of suicide plans.
21st July 2002:	Stephen tells Christine he rejects suicide plans.
26th July 2002:	Stephen plans party.
2nd August 2002:	Party.

Offence criteria.

Instigating or Aiding Suicide:

s163 of the Tasmanian Criminal Code states that: Any person who instigates or aids another to kill himself is guilty of a crime.

In order to prove the crime of instigating or aiding suicide (under s163 of the Tasmanian Criminal Code), the Crown must prove each of the following beyond a reasonable doubt:

1. That the deceased committed suicide.

2. That the accused was present at the time when the act(s) which resulted in suicide was being committed.

3. That the accused intentionally helped the deceased carry out these acts

   OR

   That the accused intentionally encouraged suicide by words or conduct

   OR

   That the accused expressed his agreement and support of the acts which resulted in suicide

   OR

   That the accused intentionally commanded the acts which resulted in suicide

Where each of the above elements can be proven beyond a reasonable doubt, the accused can be convicted of the crime of instigating or aiding suicide, under s163 of the Tasmanian Criminal Code.

Murder:

s157(1)(a) of the Tasmanian Criminal Code states that: Culpable homicide is murder if it is committed with an intention to cause death of any person, whether of the person killed or not.

In order to prove the crime of murder (under s157(1)(a) of the Tasmanian Criminal Code), the Crown must prove each of the following beyond a reasonable doubt:

1. That an act which is the cause of death, and which is directly and immediately connected with the death of the deceased can be established.

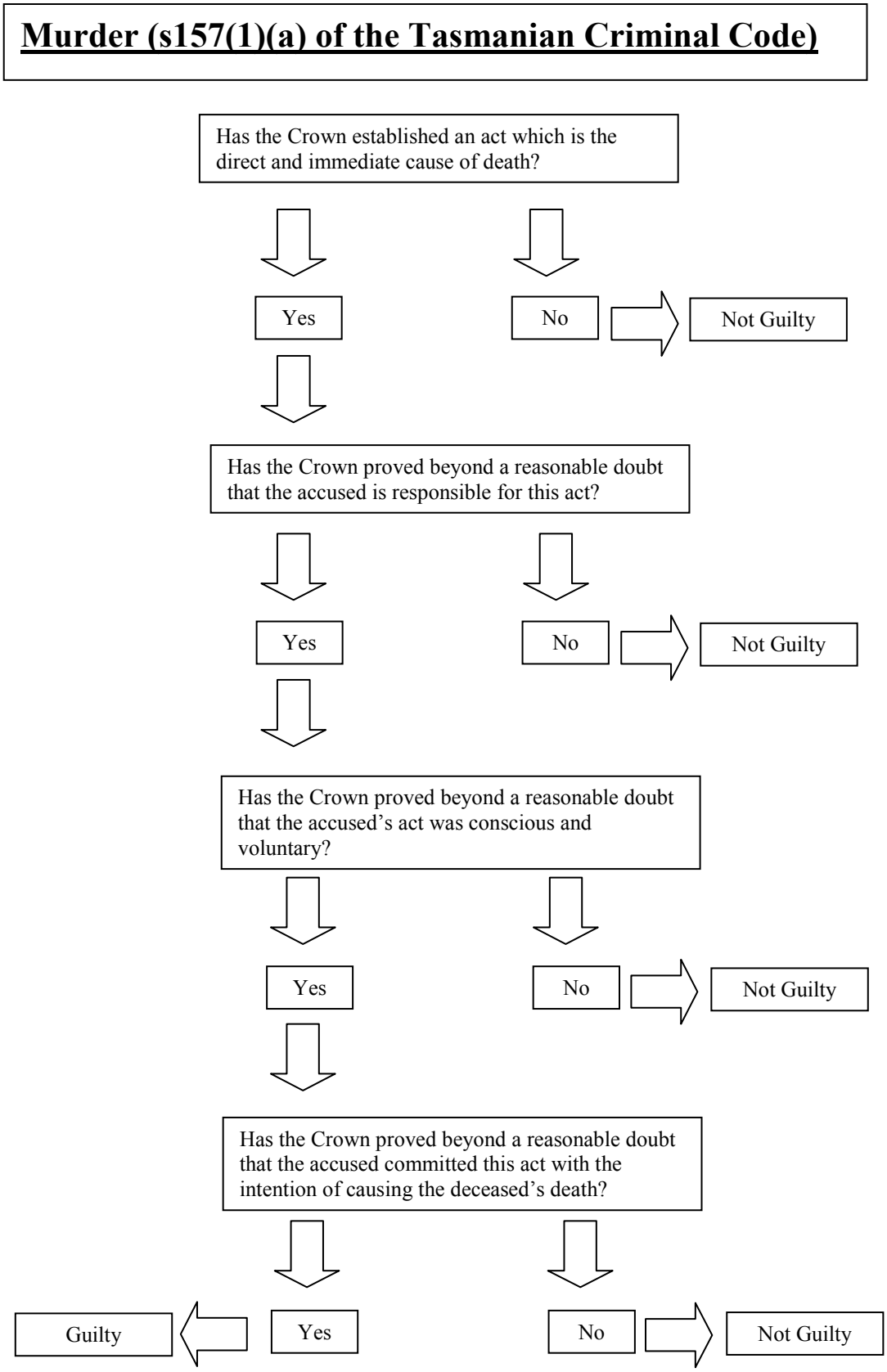
2. That the accused's act was conscious and voluntary.

3. That the accused was responsible for this act.

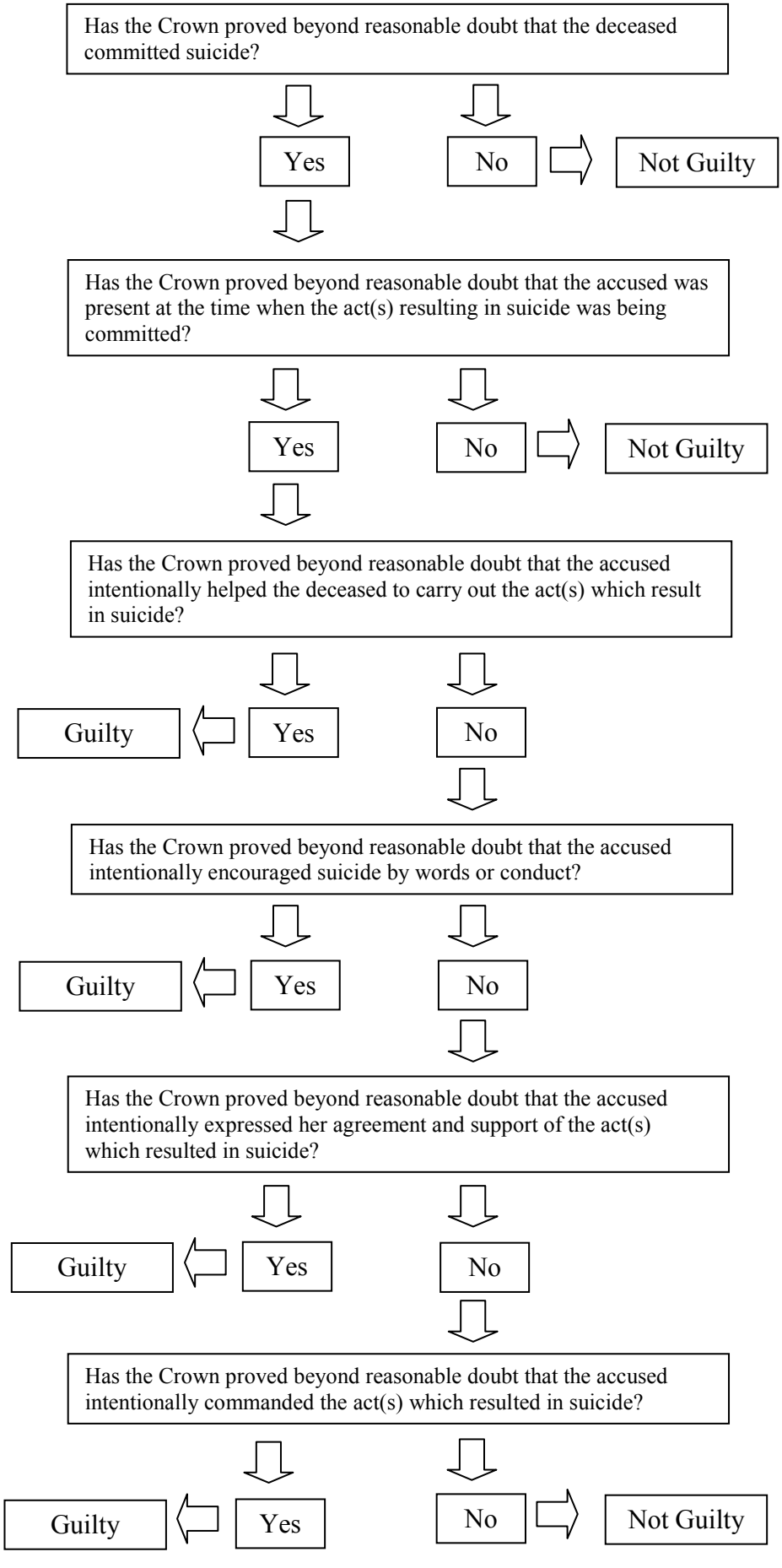
4. That the accused committed this act with the intention of causing the deceased's death.

Where each of the above elements can be proven beyond a reasonable doubt, the accused can be convicted of the crime of murder under s157(1)(a) of the Tasmanian Criminal Code.

Verdict flowcharts.



Aiding or Instigating Suicide (s163 of the Tasmanian Criminal Code)



Appendix E

Experiment 1 Participant Instructions

Own notes absent, provided notes absent condition.

Before the Trial:

What you will be seeing today is a film of a mock criminal trial. In this film, the characters are played by ordinary people, but the facts are based around a real criminal trial which occurred in New South Wales in recent years. To make the film as short as possible, some procedural details have been left out (for example, you will not see each of the witnesses get sworn in), and the trial has been edited in places. The film goes for 55 minutes. After you have seen the trial, you will not be given a chance to deliberate as a group, but will be required to reach a verdict as an individual, and to answer some written questions about the facts and law of the case. You are not allowed to make any notes while watching the trial, as this may distract you.

After the Trial:

Now that you have seen the trial, I will hand out some questions regarding the facts and law of the case for you to answer. These are multiple choice questions, so all you are required to do is circle the correct option. Please work through these questions on your own, without discussing them with anyone. When you think you have finished, let me know.

Hand out Questionnaire 1

Now that I have handed out the questionnaire, could you please write at the top of your page, in the gap next to Code, a four digit number, made up of the last two digits of your phone number, followed by the last two digits of your birth year. So for example, the last two digits of my phone number are 11, and I was born in 1983, so my code will be 1183. I won't be able to identify you from this code. The pages in the questionnaire are double-sided, so make sure you don't accidentally skip anything.

Participants Complete Questionnaire 1. Collect Questionnaire 1.

I am now going to give you 5 minutes to reflect on the content of the trial, after which I will get you to complete the same questionnaire for a second time.

After 5 mins, hand out Questionnaire 2

Before you work through this again, could you please put the same code that you used on the first questionnaire; the last two digits of your phone number, and the last two digits of your birth year. Remember, I cannot identify who you are from this code, but I need to be able to match the questionnaires.

Participants Complete Questionnaire 2. Collect Questionnaire 2.

Own notes present, provided notes absent condition.

Before the Trial:

What you will be seeing today is a film of a mock criminal trial. In this film, the characters are played by ordinary people, but the facts are based around a real criminal trial which occurred in New South Wales in recent years. To make the film as short as possible, some procedural details have been left out (for example, you will not see each of the witnesses get sworn in, and the trial has been edited in places. The film goes for 55 minutes. After you have seen the trial, you will not be given a chance to deliberate as a group, but will be required to reach a verdict as an individual, and to answer some written questions about the facts and law of the case. You're allowed to make as many notes as you like throughout the trial, using the materials provided, and you will be able to use these notes to help you answer the questions and reach your verdict.

After the Trial:

Could everyone please put all the notes you took throughout the trial on the floor beneath you. Now that you have seen the trial, I will hand out some questions regarding the facts and law of the case for you to answer. You will get the opportunity to answer the same set of questions twice; once without your notes, and once with your notes. These are multiple choice questions, so all you are required to do is circle the correct option. Please work through these questions on your own, without discussing them with anyone, and without referring to your notes. When you think you have finished, let me know.

Hand out Questionnaire 1

Now that I have handed out the questionnaire, could you please write at the top of your page, in the gap next to Code, a four digit number, made up of the last two digits of your phone number, followed by the last two digits of your birth year. So for example, the last two digits of my phone number are 11, and I was born in 1983, so my code will be 1183. I won't be able to identify you from this code. The pages in the questionnaire are double-sided, so make sure you don't accidentally skip anything.

Participants Complete Questionnaire 1. Collect Questionnaire 1.

Before I hand around the second questionnaire, please take 5 minutes to review the material you have recorded in your notes.

After 5 mins...

I am now handing out another set of the same questions as you have already answered, but this time, you can complete them with reference to your notes. I urge you not to simply put the same answers again, but to actively refer to your notes where possible to make sure your answer is correct. When you think you have finished, let me known

Hand out Questionnaire 2

Before you work through this again, could you please put the same code that you used on the first questionnaire; the last two digits of your phone number, and the last two digits of your birth year. Remember, I cannot identify who you are from this code, but I need to be able to match the questionnaires.

Participants Complete Questionnaire 2. Collect Questionnaire 2.

Own notes absent, provided notes present condition.

Before the Trial:

What you will be seeing today is a film of a mock criminal trial. In this film, the characters are played by ordinary people, but the facts are based around a real criminal trial which occurred in New South Wales in recent years. To make the film as short as possible, some procedural details have been left out (for example, you will not see each of the witnesses get sworn in), and the trial has been edited in places. The film goes for 55 minutes. After you have seen the trial, you will not be given a chance to deliberate as a group, but will be required to reach a verdict as an individual, and to answer some written questions about the facts and law of the case. You are not allowed to make any notes while watching the trial, as this may distract you, but at the conclusion of the trial, you will receive some prepared notes, which you will be able to use to help you reach your verdict and answer the questions.

After the Trial:

Now that you have seen the trial, I will hand out some questions regarding the facts and law of the case for you to answer. You will get the opportunity to answer the same set of questions twice; once without the notes, and once with the notes. These are multiple choice questions, so all you are required to do is circle the correct option. Please work through these questions on your own, without discussing them with anyone. When you think you have finished, let me know.

Hand out Questionnaire 1

Now that I have handed out the questionnaire, could you please write at the top of your page, in the gap next to Code, a four digit number, made up of the last two digits of your phone number, followed by the last two digits of your birth year. So for example, the last two digits of my phone number are 11, and I was born in 1983, so my code will be 1183. I won't be able to identify you from this code. The pages in the questionnaire are double-sided, so make sure you don't accidentally skip anything.

Participants Complete Questionnaire 1. Collect Questionnaire 1.

I am now handing around the prepared notes. You will each have the same bundle of notes, which includes a copy of the trial transcript, a written copy of the judge's instructions, verdict flow-charts, offence criteria, and a chronology of events. These are all clearly labelled, and all pages are double-sided. Could I also ask you to please

not write anything on these provided materials, so that they can be re-used. I will give you five minutes now to have a look over these materials.

Hand out Provided Materials. After 5 mins…

I am now handing out another set of the same questions as you have already answered, but this time, you can complete them with reference to the notes. I urge you not to simply put the same answers again, but to actively refer to the notes where possible to make sure your answer is correct. When you think you have finished, let me know.

Hand out Questionnaire 2

Before you work through this again, could you please put the same code that you used on the first questionnaire; the last two digits of your phone number, and the last two digits of your birth year. Remember, I cannot identify who you are from this code, but I need to be able to match the questionnaires.

Participants Complete Questionnaire 2. Collect Questionnaire 2.

Own notes present, provided notes present condition.

Before the Trial:

What you will be seeing today is a film of a mock criminal trial. In this film, the characters are played by ordinary people, but the facts are based around a real criminal trial which occurred in New South Wales in recent years. To make the film as short as possible, some procedural details have been left out (for example, you will not see each of the witnesses get sworn in), and the trial has been edited in places. The film goes for 55 minutes. After you have seen the trial, you will not be given a chance to deliberate as a group, but will be required to reach a verdict as an individual, and to answer some written questions about the facts and law of the case. You are allowed to make as many notes as you like throughout the trial using the materials provided for you, and at the conclusion of the trial, you will also receive some prepared notes, which you will be able to use to help you reach your verdict and answer the questions.

After the Trial:

Now that you have seen the trial, I will hand out some questions regarding the facts and law of the case for you to answer. You will get the opportunity to answer the same set of questions twice; once without any notes, and once with both your own notes and the provided notes. These are multiple choice questions, so all you are required to do is circle the correct option. Please work through these questions on your own, without discussing them with anyone. When you think you have finished, let me know.

Hand out Questionnaire 1

Now that I have handed out the questionnaire, could you please write at the top of your page, in the gap next to Code, a four digit number, made up of the last two digits of your phone number, followed by the last two digits of your birth year. So for example, the last two digits of my phone number are 11, and I was born in 1983, so my code will be 1183. I won't be able to identify you from this code. The pages in the questionnaire are double-sided, so make sure you don't accidentally skip anything.

Participants Complete Questionnaire 1. Collect Questionnaire 1.

I am now handing around the prepared notes. You will each have the same bundle of notes, which includes a copy of the trial transcript, a written copy of the judge's instructions, verdict flow-charts, offence criteria, and a chronology of events. These are all clearly labelled, and all pages are double-sided. Could I also ask you to please not write anything on these provided materials, so that they can be re-used. I will give you five minutes now to have a look over these materials and the material you have recorded in your notes.

.

Hand out Provided Materials. After 5 mins…

I am now handing out another set of the same questions as you have already answered, but this time, you can complete them with reference to the notes. I urge you not to simply put the same answers again, but to actively refer to the notes where possible to make sure your answer is correct. When you think you have finished, let me know.

Hand out Questionnaire 2

Before you work through this again, could you please put the same code that you used on the first questionnaire; the last two digits of your phone number, and the last two digits of your birth year. Remember, I cannot identify who you are from this code, but I need to be able to match the questionnaires

Participants Complete Questionnaire 2. Collect Questionnaire 2.

Appendix F

Experiment 2 Participant Instructions

Own notes condition.

Before the Trial:

What you will be seeing today is a film of a mock criminal trial. In this film, the characters are played by ordinary people, but the facts are based around a real criminal trial which occurred in New South Wales in recent years. To make the film as short as possible, some procedural details have been left out (for example, you will not see each of the witnesses get sworn in), and the trial has been edited in places. The film goes for 55 minutes. After you have seen the trial, you will be required to reach a verdict as an individual, and to answer some written questions about the facts and law of the case.

You are allowed to make as many notes as you like throughout the trial, using the materials provided, and you will be able to use these notes to help you answer the questions and reach your verdict.

After the Trial:

Before I hand around the questionnaire, please take 5 minutes to review the material you have recorded in your notes.

After 5 mins...

I will now hand around the questionnaire. These are multiple choice questions, so all you are required to do is circle the correct option. Please work through these questions on your own, without discussing them with anyone, and make sure you complete the age and sex details at the top of the front page of the questionnaire. You can refer to your notes as much as you would like to help you determine the correct answers. When you think you have finished, please bring your questionnaire to me.

Other materials condition.

Before the Trial:

What you will be seeing today is a film of a mock criminal trial. In this film, the characters are played by ordinary people, but the facts are based around a real criminal trial which occurred in New South Wales in recent years. To make the film as short as possible, some procedural details have been left out (for example, you will not see each of the witnesses get sworn in), and the trial has been edited in places. The film goes for 55 minutes. After you have seen the trial, you will be required to reach a verdict as an individual, and to answer some written questions about the facts and law of the case.

You are not allowed to make any notes while watching the trial, as this may distract you, but at the conclusion of the trial, you will receive some prepared notes, which you will be able to use to help you reach your verdict and answer the questions.

After the Trial:

I am now handing around the prepared notes. You each have the same bundle of notes, which includes a written copy of the judge's instructions, verdict flow-charts, offence criteria, and a chronology of events. These are all clearly labelled. You can use these notes as much as you would like to help you determine the correct answers on your questionnaire. Before I hand around the questionnaire, please take 5 minutes to review these materials.

After 5 mins...

I will now hand around the questionnaire. These are multiple choice questions, so all you are required to do is circle the correct option. Please work through these questions on your own, without discussing them with anyone, and make sure you complete the age and sex details at the top of the front page of the questionnaire. Please remember that you can refer to the notes as much as you would like to help you determine the correct answers. When you think you have finished, please bring your questionnaire to me.

Transcript condition.

Before the Trial:

What you will be seeing today is a film of a mock criminal trial. In this film, the characters are played by ordinary people, but the facts are based around a real criminal trial which occurred in New South Wales in recent years. To make the film as short as possible, some procedural details have been left out (for example, you will not see each of the witnesses get sworn in), and the trial has been edited in places. The film goes for 55 minutes. After you have seen the trial, you will be required to reach a verdict as an individual, and to answer some written questions about the facts and law of the case.

You are not allowed to make any notes while watching the trial, as this may distract you, but at the conclusion of the trial, you will receive some prepared notes, which you will be able to use to help you reach your verdict and answer the questions.

After the Trial:

I am now handing around the prepared notes, which basically consist of a transcript of the entire trial, excluding the judge's instructions. You can use the transcript as much as you would like to help you determine the correct answers on your questionnaire. Before I hand around the questionnaire, please take 5 minutes to review the transcript.

After 5 mins...

I will now hand around the questionnaire. These are multiple choice questions, so all you are required to do is circle the correct option. Please work through these questions on your own, without discussing them with anyone, and make sure you complete the age and sex details at the top of the front page of the questionnaire. Please remember that you can refer to the notes as much as you would like to help you determine the correct answers. When you think you have finished, please bring your questionnaire to me.

Other materials plus transcript condition.

Before the Trial:

What you will be seeing today is a film of a mock criminal trial. In this film, the characters are played by ordinary people, but the facts are based around a real criminal trial which occurred in New South Wales in recent years. To make the film as short as possible, some procedural details have been left out (for example, you will not see each of the witnesses get sworn in), and the trial has been edited in places. The film goes for 55 minutes. After you have seen the trial, you will be required to reach a verdict as an individual, and to answer some written questions about the facts and law of the case.

You are not allowed to make any notes while watching the trial, as this may distract you, but at the conclusion of the trial, you will receive some prepared notes, which you will be able to use to help you reach your verdict and answer the questions.

After the Trial:

I am now handing around the prepared notes. You each have the same bundle of notes, which includes the trial transcript, a written copy of the judge's instructions, verdict flow-charts, offence criteria, and a chronology of events. These are all clearly labelled. You can use these notes as much as you would like to help you determine the correct answers on your questionnaire. Before I hand around the questionnaire, please take 5 minutes to review these materials.

After 5 mins..

I will now hand around the questionnaire. These are multiple choice questions, so all you are required to do is circle the correct option. Please work through these questions on your own, without discussing them with anyone, and make sure you complete the age and sex details at the top of the front page of the questionnaire. Please remember that you can refer to the notes as much as you would like to help you determine the correct answers. When you think you have finished, please bring your questionnaire to me.

Appendix G

Part C of Participant Questionnaire for Deliberating Participants[14]

Part C of this questionnaire requires you to reach a verdict for each of the charges, and complete some ratings scales.

1. What is your verdict on the charge of murder (contrary to s157 of the Tasmanian Criminal Code)? (Circle one)

I find Jane Mitchell **not guilty** I find Jane Mitchell **guilty**

2. What is your verdict on the charge of instigating or aiding suicide (contrary to s163 of the Tasmanian Criminal Code)? (Circle one)

I find Jane Mitchell **not guilty** I find Jane Mitchell **guilty**

3. How confident are you that your verdict is correct?

1	2	3	4	5	6	7
Not very Confident			Moderately Confident			Very Confident

4. How difficult did you find it to understand the law in this case? (circle a number)

1	2	3	4	5	6	7
Not very Difficult			Moderately Difficult			Very Difficult

5. How difficult did you find it to arrive at a verdict? (circle a number)

1	2	3	4	5	6	7
Not very Difficult			Moderately Difficult			Very Difficult

6. How useful did you find the trial transcript? (circle a number)

1	2	3	4	5	6	7
Not very Useful			Moderately Useful			Very Useful

7. How useful did you find the chronology of events? (circle a number)

1	2	3	4	5	6	7
Not very Useful			Moderately Useful			Very Useful

[14] Part C of the questionnaire for participants in the other materials plus transcript condition is shown here, to demonstrate the full range of utility ratings participants were required to make, however the utility ratings participants were required to complete differed depending on the materials they were exposed to.

8. How useful did you find the offence criteria? (circle a number)

1 2 3 4 5 6 7
Not very Useful Moderately Useful Very Useful

9. How useful did you find the verdict flowcharts? (circle a number)

1 2 3 4 5 6 7
Not very Useful Moderately Useful Very Useful

10. How useful did you find the written judicial instructions? (circle a number)

1 2 3 4 5 6 7
Not very Useful Moderately Useful Very Useful

11. How useful did you find the deliberation process? (circle a number)

1 2 3 4 5 6 7
Not very Useful Moderately Useful Very Useful

Part C of Participant Questionnaire for Non-Deliberating Participants

Part C of this questionnaire requires you to reach a verdict for each of the charges, and complete some ratings scales.

1. What is your verdict on the charge of murder (contrary to s157 of the Tasmanian Criminal Code)? (Circle one)

I find Jane Mitchell **not guilty** I find Jane Mitchell **guilty**

2. What is your verdict on the charge of instigating or aiding suicide (contrary to s163 of the Tasmanian Criminal Code)? (Circle one)

I find Jane Mitchell **not guilty** I find Jane Mitchell **guilty**

3. How confident are you that your verdict is correct?

1 2 3 4 5 6 7
Not very Confident Moderately Confident Very Confident

4. How difficult did you find it to understand the law in this case? (circle a number)

1 2 3 4 5 6 7
Not very Difficult Moderately Difficult Very Difficult

5. How difficult did you find it to arrive at a verdict? (circle a number)

1 2 3 4 5 6 7
Not very Difficult Moderately Difficult Very Difficult

6. How useful did you find the trial transcript? (circle a number)

1 2 3 4 5 6 7
Not very Useful Moderately Useful Very Useful

7. How useful did you find the chronology of events? (circle a number)

1 2 3 4 5 6 7
Not very Useful Moderately Useful Very Useful

8. How useful did you find the offence criteria? (circle a number)

1 2 3 4 5 6 7
Not very Useful Moderately Useful Very Useful

9. How useful did you find the verdict flowcharts? (circle a number)

1 2 3 4 5 6 7
Not very Useful Moderately Useful Very Useful

10. How useful did you find the written judicial instructions? (circle a number)

1	2	3	4	5	6	7
Not very Useful			Moderately Useful			Very Useful

11. How useful would you have found it to deliberate? (circle a number)

1	2	3	4	5	6	7
Not very Useful			Moderately Useful			Very Useful

Appendix H

Experiment 2 Deliberation Instructions

It is important that you continue to spend your deliberation time discussing the case, so if you have trouble starting a discussion, or run out of things to consider, you might like to engage in any of these suggested activities:

- State your own point of view and the reasoning behind it
- Listen to other jurors' points of view and their reasoning
- Consider and discuss the legal and factual issues
- Consider and discuss the evidence
- Examine the matters on which you are in disagreement
- Attempt to resolve any disagreements or misunderstandings among jurors
- Highlight any issues of particular difficulty and see if fellow jurors can help resolve these

Appendix I

Experiment 2 Rumination Worksheet

This worksheet will present you with a number of questions regarding the mock trial you have just observed. The questions are designed to guide your decision-making process and assist you in reaching a balanced verdict, so please approach them with an open mind, and answer them as objectively as possible.

It is very important that you attempt all questions, regardless of your current position on the verdict.

1. What evidence presented in the trial would lead you to consider finding the defendant **guilty** of **murder**?

2. What evidence presented in the trial would lead you to consider finding the defendant **not guilty** of **murder**?

3. What evidence presented in the trial would lead you to consider finding the defendant **guilty** of **aiding and abetting suicide**?

4. What evidence presented in the trial would lead you to consider finding the defendant **not guilty** of **instigating or aiding suicide**?

5. Did you identify any flaws in either of the lawyers' arguments? If so, what were they?

6. Which **lawyer** did you find more convincing and why?

7. Which **witness** did you find **most convincing** and why? Refer to Overhead for a reminder of witnesses' names.

8. Which **witness** did you find **least convincing** and why? Refer to Overhead for a reminder of witnesses' names.

9. Which aspects of the trial, if any, did you find difficult to understand?

10. What else would you have liked to know which would have helped you arrive at a verdict more easily, but was not among the facts and evidence presented in the trial?

11. What is your final verdict on the **murder charge**? Explain the reasoning behind your decision, and identify the most convincing piece of evidence that led to this verdict.

12. What is your final verdict on the **instigating or aiding suicide charge**? Explain the reasoning behind your decision, and identify the most convincing piece of evidence that led to this verdict.

Overhead Reminder of Witness Names

Witness Names

Crown Witness 1: John Reid

Crown Witness 2: Dr Simon Greene

Crown Witness 3: Phillip Butler

Crown Witness 4: Sister Christine Taylor

Defence Witness 1: Jane Mitchell

Appendix J

Experiment 3 Participant Instructions

Own notes, expect to deliberate and deliberate condition.

Before the Trial:

What you will be seeing today is a film of a mock criminal trial. In this film, the characters are played by ordinary people, but the facts are based around a real criminal trial which occurred in New South Wales in recent years. To make the film as short as possible, some procedural details have been left out (for example, you will not see each of the witnesses get sworn in), and the trial has been edited in places. The film goes for 55 minutes. After you have seen the trial, you will be given a chance to deliberate as a group, and you will then be required to reach a verdict as an individual, and to answer some written questions about the facts and law of the case. You are allowed to make as many notes as you like throughout the trial, using the materials provided, and you will be able to use these notes to help you answer the questions and reach your verdict.

After the Trial:

Now that you have seen the trial, you will have a chance to deliberate in groups of 4-5 people. A jury on a real case might deliberate for several days; obviously, you won't have that much time, and I will stop you once I think you've had enough time to deliberate.

Randomly allocate participants into groups of 4-5 people

The aim of your deliberations is not necessarily just to reach a unanimous verdict, but also to discuss the evidence and consider the legal issues. You are free to deliberate as you wish, but deliberations would generally include consideration of the evidence, and objective consideration of the views of each of your fellow jurors. You should weigh up one another's opinions about the evidence and test them by discussion.

Even if you feel you have reached a unanimous decision, it is important that you continue to spend your deliberation time discussing the case, so if you have trouble starting a discussion, or run out of things to consider, you might like to engage in any of these suggested activities: state your own point of view and the reasoning behind it; listen to other jurors' points of view and their reasoning; consider and discuss the legal and factual issues; consider and discuss the evidence; examine the matters on which you are in disagreement; attempt to resolve any disagreements or misunderstandings among jurors; highlight any issues of particular difficulty and see if fellow jurors can help resolve these.

I urge you to refer to your notes as much as possible during your discussions. You are able to add to them if you wish.

Allow 30 mins deliberation time..

After the Deliberation:

Now that you have had a chance to discuss the case in groups, I will hand out some questions regarding the facts and law of the case for you to answer. These are multiple choice questions, so all you are required to do is circle the correct option. Please work through these questions on your own, without discussing them with anyone. You can refer to your notes as much as you would like to help you decide the best answer. When you think you have finished, let me know.

Hand out Questionnaire

Now that I have handed out the questionnaire, could you please write at the top of your page, in the space provided, your age and sex.

Own notes, expect to deliberate but don't deliberate condition.

Before the Trial:

What you will be seeing today is a film of a mock criminal trial. In this film, the characters are played by ordinary people, but the facts are based around a real criminal trial which occurred in New South Wales in recent years. To make the film as short as possible, some procedural details have been left out (for example, you will not see each of the witnesses get sworn in), and the trial has been edited in places. The film goes for 55 minutes. After you have seen the trial, you will be given a chance to deliberate as a group, and you will then be required to reach a verdict as an individual, and to answer some written questions about the facts and law of the case. You are allowed to make as many notes as you like throughout the trial, using the materials provided, and you will be able to use these notes to help you answer the questions and reach your verdict.

After the Trial:

I explained to you at the start that you would have the chance to deliberate as a group once you had seen the trial, but while you were watching the video I realised that I've made a mistake, and I've actually already got enough people in the deliberating group, so actually I think I won't get you guys to deliberate – sorry about that.

What I will get you to do is just fill out the questionnaire. So now I'm handing out some questions regarding the facts and law of the case for you to answer. These are multiple choice questions, so all you are required to do is circle the correct option. Please work through these questions on your own, without discussing them with anyone. You can refer to your notes as much as you would like to help you decide the best answer. When you think you have finished, let me know.

Hand out Questionnaire

Now that I have handed out the questionnaire, could you please write at the top of your page, in the space provided, your age and sex.

Provided notes, expect to deliberate and deliberate condition.

Before the Trial:

What you will be seeing today is a film of a mock criminal trial. In this film, the characters are played by ordinary people, but the facts are based around a real criminal trial which occurred in New South Wales in recent years. To make the film as short as possible, some procedural details have been left out (for example, you will not see each of the witnesses get sworn in), and the trial has been edited in places. The film goes for 55 minutes. After you have seen the trial, you will be given a chance to deliberate as a group, and you will then be required to reach a verdict as an individual, and to answer some written questions about the facts and law of the case. You are not allowed to make any notes while watching the trial, as this may distract you, but at the conclusion of the trial, you will receive some prepared notes, which you will be able to use to help you reach your verdict and answer the questions.

After the Trial:

Now that you have seen the trial, you will have a chance to deliberate in groups of 4-5 people. A jury on a real case might deliberate for several days; obviously, you won't have that much time, and I will stop you once I think you've had enough time to deliberate.

Randomly allocate participants into groups of 4-5 people

I am now handing around the prepared notes. You each have the same bundle of notes, which includes a copy of a trial transcript, a written copy of the judge's instructions, verdict flow-charts, offence criteria, and a chronology of events. These are all clearly labelled. These are not part of the evidence of the case, but they are materials which have been prepared to help you understand and remember some aspects of the case, and you might like to use these to guide your decision-making process.

The aim of your deliberations is not necessarily just to reach a unanimous verdict, but also to discuss the evidence and consider the legal issues. You are free to deliberate as you wish, but deliberations would generally include consideration of the evidence, and objective consideration of the views of each of your fellow jurors. You should weigh up one another's opinions about the evidence and test them by discussion.

Even if you feel you have reached a unanimous decision, it is important that you continue to spend your deliberation time discussing the case, so if you have trouble starting a discussion, or run out of things to consider, you might like to engage in any of these suggested activities: state your own point of view and the reasoning behind it; listen to other jurors' points of view and their reasoning; consider and discuss the legal and factual issues; consider and discuss the evidence; examine the matters on which you are in disagreement; attempt to resolve any disagreements or misunderstandings among jurors; highlight any issues of particular difficulty and see if fellow jurors can help resolve these.

I urge you to refer to the materials as much as possible during your discussions. If you wish to make additional notes during your deliberations, please do so on a separate piece of paper, and not on the materials themselves.

Allow 30 mins deliberation time..

After the Deliberation:

Now that you have had a chance to discuss the case in groups, I will hand out some questions regarding the facts and law of the case for you to answer. These are multiple choice questions, so all you are required to do is circle the correct option. Please work through these questions on your own, without discussing them with anyone. You can refer to the provided materials as much as you would like to help you decide the best answer. When you think you have finished, let me know.

Hand out Questionnaire

Now that I have handed out the questionnaire, could you please write at the top of your page, in the space provided, your age and sex.

Provided notes, expect to deliberate but don't deliberate condition.

Before the Trial:

What you will be seeing today is a film of a mock criminal trial. In this film, the characters are played by ordinary people, but the facts are based around a real criminal trial which occurred in New South Wales in recent years. To make the film as short as possible, some procedural details have been left out (for example, you will not see each of the witnesses get sworn in), and the trial has been edited in places. The film goes for 55 minutes. After you have seen the trial, you will be given a chance to deliberate as a group, and you will then be required to reach a verdict as an individual, and to answer some written questions about the facts and law of the case. You are not allowed to make any notes while watching the trial, as this may distract you, but at the conclusion of the trial, you will receive some prepared notes, which you will be able to use to help you reach your verdict and answer the questions.

After the Trial:

I am now handing around the prepared notes. You each have the same bundle of notes, which includes a copy of a trial transcript, a written copy of the judge's instructions, verdict flow-charts, offence criteria, and a chronology of events. These are all clearly labelled. These are not part of the evidence of the case, but they are materials which have been prepared to help you understand and remember some aspects of the case, and you might like to use these to guide your decision-making process.

I explained to you at the start that you would have the chance to deliberate as a group once you had seen the trial, but while you were watching the video I realised that I've made a mistake, and I've actually already got enough people in the deliberating group, so actually I think I won't get you guys to deliberate – sorry about that.

What I will get you to do is just fill out the questionnaire. So now I'm handing out some questions regarding the facts and law of the case for you to answer. These are multiple choice questions, so all you are required to do is circle the correct option. Please work through these questions on your own, without discussing them with anyone. You can refer to the provided materials as much as you would like to help you decide the best answer. When you think you have finished, let me know.

Hand out Questionnaire

Now that I have handed out the questionnaire, could you please write at the top of your page, in the space provided, your age and sex.

Own notes, don't expect to deliberate but deliberate condition.

Before the Trial:

What you will be seeing today is a film of a mock criminal trial. In this film, the characters are played by ordinary people, but the facts are based around a real criminal trial which occurred in New South Wales in recent years. To make the film as short as possible, some procedural details have been left out (for example, you will not see each of the witnesses get sworn in), and the trial has been edited in places. The film goes for 55 minutes. After you have seen the trial, you will not be given a chance to deliberate as a group, but will be required to reach a verdict as an individual, and to answer some written questions about the facts and law of the case. You are allowed to make as many notes as you like throughout the trial, using the materials provided, and you will be able to use these notes to help you answer the questions and reach your verdict.

After the Trial:

I explained to you at the start that you wouldn't have the chance to deliberate as a group once you had seen the trial, but while you were watching the video I realised that I've made a mistake, and I've actually already got enough people in the non-deliberating group, so actually I think I will get you guys to deliberate – sorry about that.

Now that you have seen the trial, you will have a chance to deliberate in groups of 4-5 people. A jury on a real case might deliberate for several days; obviously, you won't have that much time, and I will stop you once I think you've had enough time to deliberate.

Randomly allocate participants into groups of 4-5 people

The aim of your deliberations is not necessarily just to reach a unanimous verdict, but also to discuss the evidence and consider the legal issues. You are free to deliberate as you wish, but deliberations would generally include consideration of the evidence, and objective consideration of the views of each of your fellow jurors. You should weigh up one another's opinions about the evidence and test them by discussion.

Even if you feel you have reached a unanimous decision, it is important that you continue to spend your deliberation time discussing the case, so if you have trouble starting a discussion, or run out of things to consider, you might like to engage in any of these suggested activities: state your own point of view and the reasoning behind it; listen to other jurors' points of view and their reasoning; consider and discuss the legal and factual issues; consider and discuss the evidence; examine the matters on which you are in disagreement; attempt to resolve any disagreements or misunderstandings among jurors; highlight any issues of particular difficulty and see if fellow jurors can help resolve these.

I urge you to refer to your notes as much as possible during your discussions. You are able to add to them if you wish.

Allow 30 mins deliberation time..

<u>After the Deliberation:</u>

Now that you have had a chance to discuss the case in groups, I will hand out some questions regarding the facts and law of the case for you to answer. These are multiple choice questions, so all you are required to do is circle the correct option. Please work through these questions on your own, without discussing them with anyone. You can refer to your notes as much as you would like to help you decide the best answer. When you think you have finished, let me know.

Hand out Questionnaire

Now that I have handed out the questionnaire, could you please write at the top of your page, in the space provided, your age and sex.

Own notes, don't expect to deliberate and don't deliberate condition.

<u>Before the Trial:</u>

What you will be seeing today is a film of a mock criminal trial. In this film, the characters are played by ordinary people, but the facts are based around a real criminal trial which occurred in New South Wales in recent years. To make the film as short as possible, some procedural details have been left out (for example, you will not see each of the witnesses get sworn in), and the trial has been edited in places. The film goes for 55 minutes. After you have seen the trial, you will not be given a chance to deliberate as a group, but will be required to reach a verdict as an individual, and to answer some written questions about the facts and law of the case. You are allowed to make as many notes as you like throughout the trial, using the materials provided, and you will be able to use these notes to help you answer the questions and reach your verdict.

<u>After the Trial:</u>

Now I'm handing out some questions regarding the facts and law of the case for you to answer. These are multiple choice questions, so all you are required to do is circle the correct option. Please work through these questions on your own, without

discussing them with anyone. You can refer to your notes as much as you would like to help you decide the best answer. When you think you have finished, let me know.

Hand out Questionnaire

Now that I have handed out the questionnaire, could you please write at the top of your page, in the space provided, your age and sex.

Provided notes, don't expect to deliberate but deliberate condition.

Before the Trial:

What you will be seeing today is a film of a mock criminal trial. In this film, the characters are played by ordinary people, but the facts are based around a real criminal trial which occurred in New South Wales in recent years. To make the film as short as possible, some procedural details have been left out (for example, you will not see each of the witnesses get sworn in), and the trial has been edited in places. The film goes for 55 minutes. After you have seen the trial, you will not be given a chance to deliberate as a group, but will be required to reach a verdict as an individual, and to answer some written questions about the facts and law of the case. You are not allowed to make any notes while watching the trial, as this may distract you, but at the conclusion of the trial, you will receive some prepared notes, which you will be able to use to help you reach your verdict and answer the questions.

After the Trial:

I explained to you at the start that you wouldn't have the chance to deliberate as a group once you had seen the trial, but while you were watching the video I realised that I've made a mistake, and I've actually already got enough people in the non-deliberating group, so actually I think I will get you guys to deliberate – sorry about that.

Now that you have seen the trial, you will have a chance to deliberate in groups of 4-5 people. A jury on a real case might deliberate for several days; obviously, you won't have that much time, and I will stop you once I think you've had enough time to deliberate.

Randomly allocate participants into groups of 4-5 people

I am now handing around the prepared notes. You each have the same bundle of notes, which includes a copy of a trial transcript, a written copy of the judge's instructions, verdict flow-charts, offence criteria, and a chronology of events. These are all clearly labelled. These are not part of the evidence of the case, but they are materials which have been prepared to help you understand and remember some aspects of the case, and you might like to use these to guide your decision-making process.

The aim of your deliberations is not necessarily just to reach a unanimous verdict, but also to discuss the evidence and consider the legal issues. You are free to deliberate as you wish, but deliberations would generally include consideration of the evidence, and objective consideration of the views of each of your fellow jurors.

You should weigh up one another's opinions about the evidence and test them by discussion.

Even if you feel you have reached a unanimous decision, it is important that you continue to spend your deliberation time discussing the case, so if you have trouble starting a discussion, or run out of things to consider, you might like to engage in any of these suggested activities: state your own point of view and the reasoning behind it; listen to other jurors' points of view and their reasoning; consider and discuss the legal and factual issues; consider and discuss the evidence; examine the matters on which you are in disagreement; attempt to resolve any disagreements or misunderstandings among jurors; highlight any issues of particular difficulty and see if fellow jurors can help resolve these.

I urge you to refer to the materials as much as possible during your discussions. If you wish to make additional notes during your deliberations, please do so on a separate piece of paper, and not on the materials themselves.

Allow 30 mins deliberation time..

<u>After the Deliberation:</u>

Now that you have had a chance to discuss the case in groups, I will hand out some questions regarding the facts and law of the case for you to answer. These are multiple choice questions, so all you are required to do is circle the correct option. Please work through these questions on your own, without discussing them with anyone. You can refer to the provided materials as much as you would like to help you decide the best answer. When you think you have finished, let me know.

Hand out Questionnaire

Now that I have handed out the questionnaire, could you please write at the top of your page, in the space provided, your age and sex.

Provided notes, don't expect to deliberate and don't deliberate condition.

<u>Before the Trial:</u>

What you will be seeing today is a film of a mock criminal trial. In this film, the characters are played by ordinary people, but the facts are based around a real criminal trial which occurred in New South Wales in recent years. To make the film as short as possible, some procedural details have been left out (for example, you will not see each of the witnesses get sworn in), and the trial has been edited in places. The film goes for 55 minutes. After you have seen the trial, you will not be given a chance to deliberate as a group, but will be required to reach a verdict as an individual, and to answer some written questions about the facts and law of the case. You are not allowed to make any notes while watching the trial, as this may distract you, but at the conclusion of the trial, you will receive some prepared notes, which you will be able to use to help you reach your verdict and answer the questions.

<u>After the Trial:</u>

I am now handing around the prepared notes. You each have the same bundle of notes, which includes a copy of a trial transcript, a written copy of the judge's instructions, verdict flow-charts, offence criteria, and a chronology of events. These are all clearly labelled. These are not part of the evidence of the case, but they are materials which have been prepared to help you understand and remember some aspects of the case, and you might like to use these to guide your decision-making process.

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Hand out Questionnaire

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Own notes, expect to deliberate, and ruminate condition.

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After the Trial:

I explained to you at the start that you would have the chance to deliberate as a group once you had seen the trial, but while you were watching the video I realised that I've made a mistake, and I've actually already got enough people in the deliberating group, so actually I think I won't get you guys to deliberate – sorry about that.

What I will get you to do instead is complete this worksheet before you fill out the questionnaire. The worksheet is designed to get you to think about the trial the way you might do if you were actually deliberating. Regardless of whether you've already made your mind up or not, you need to work through each of the items on the worksheet. EVERYONE will be working on these questions for 30 minutes, so rushing through them won't mean you get to finish any quicker than anyone else, so take your time. You can refer to your notes as you complete this worksheet.

Hand Out Rumination Worksheet. Ask everyone to put their age and sex on the worksheet before they start working on the questions. After 30 minutes, collect the Rumination Worksheet.

Now I'm handing out some questions regarding the facts and law of the case for you to answer. These are multiple choice questions, so all you are required to do is circle the correct option. Please work through these questions on your own, without discussing them with anyone. You can refer to your notes as much as you would like to help you decide the best answer. When you think you have finished, let me know. There is no set time for you to work on this one – when you are finished, you can leave, but please don't rush for that reason. If you don't participate correctly, and the data we get is strange, it will make it very hard to write up the assignment.

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take your time. You can refer to the notes you have been given as you complete this worksheet.

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Hand out Questionnaire

Now that I have handed out the questionnaire, could you please write at the top of your page, in the space provided, your age and sex.

Appendix K

Experiment 3 Scenario Analyses

Between-Subjects Factors

		Value Label	*n*
Deliberation Expectation	1.00	Expect	122
	2.00	Don't Expect	120
Deliberation	1.00	Deliberate	80
	2.00	Don't Deliberate	82
	3.00	Rumination	80
Notes	1.00	Own	122
	2.00	Provided	120

Descriptive Statistics

Expectation	Deliberation Condition	Note Type	*M*	*SD*	*n*
Expect	Deliberate	Own Notes	7.1000	1.25237	20
		Provided Notes	7.7000	1.83819	20
		Total	7.4000	1.58195	40
	Don't Deliberate	Own Notes	7.5455	1.37069	22
		Provided Notes	7.2500	2.14905	20
		Total	7.4048	1.76773	42
	Ruminate	Own Notes	7.5000	1.60591	20
		Provided Notes	7.5000	1.31789	20
		Total	7.5000	1.45002	40
	Total	Own Notes	7.3871	1.40672	62
		Provided Notes	7.4833	1.78023	60
		Total	7.4344	1.59538	122
Don't Expect	Deliberate	Own Notes	6.3500	2.49789	20
		Provided Notes	7.6500	1.63111	20
		Total	7.0000	2.18386	40
	Don't Deliberate	Own Notes	7.4500	2.06410	20
		Provided Notes	7.4000	1.98415	20
		Total	7.4250	1.99856	40
	Ruminate	Own Notes	7.3500	2.08440	20
		Provided Notes	7.8500	1.49649	20
		Total	7.6000	1.80881	40
	Total	Own Notes	7.0500	2.24307	60
		Provided Notes	7.6333	1.69712	60
		Total	7.3417	2.00208	120
Total	Deliberate	Own Notes	6.7250	1.98698	40
		Provided Notes	7.6750	1.71550	40
		Total	7.2000	1.90536	80
	Don't Deliberate	Own Notes	7.5000	1.71436	42
		Provided Notes	7.3250	2.04297	40
		Total	7.4146	1.87216	82
	Ruminate	Own Notes	7.4250	1.83816	40
		Provided Notes	7.6750	1.40306	40
		Total	7.5500	1.62963	80
	Total	Own Notes	7.2213	1.86535	122
		Provided Notes	7.5583	1.73349	120
		Total	7.3884	1.80535	242

Multivariate Tests (Test = Wilk's Lambda)

Effect	Value	*F*	Hypothesis df	Error df	Sig.	Partial Eta Squared
Intercept	.024	3138.908[a]	3.000	228.000	.000	.976
Deliberation Expectation	.997	.227[a]	3.000	228.000	.877	.003
Deliberation	.910	3.662[a]	6.000	456.000	.001	.046
Note Type	.491	78.732[a]	3.000	228.000	.000	.509
Deliberation Expectation * Deliberation	.990	.392[a]	6.000	456.000	.884	.005
Deliberation Expectation * Note Type	.994	.472[a]	3.000	228.000	.702	.006
Deliberation * Note Type	.982	.689[a]	6.000	456.000	.659	.009
Deliberation Expectation * Deliberation * Note Type	.971	1.131[a]	6.000	456.000	.343	.015

Tests of Between-Subjects Effects

Source	Type III Sums of Squares	df	Mean Square	*F*	Sig.	Partial Eta Squared
Corrected Model	32.333[c]	11	2.939	.898	.543	.041
Intercept	13196.669	1	13196.669	4030.028	.000	.946
Deliberation Expectation	.500	1	.500	.153	.696	.001
Deliberation	4.972	2	2.486	.759	.469	.007
Note Type	7.089	1	7.089	2.165	.143	.009
Deliberation Expectation * Deliberation	2.925	2	1.463	.447	.640	.004
Deliberation Expectation * Note Type	3.509	1	3.509	1.072	.302	.005
Deliberation * Note Type	12.984	2	6.492	1.983	.140	.017
Deliberation Expectation * Deliberation * Note Type	.525	2	.263	.080	.923	.001
Error	753.155	230	3.275			
Total	13996.000	242				
Corrected Total	785.488	241				

Appendix L

Experiment 4 Length Complexity Trial DVD

Appendix M

Experiment 4 Evidence Complexity Trial DVD

Appendix N

Experiment 4 Legal Complexity Trial DVD

Appendix O

Additional Sections of Experiment 4 Questionnaire

Part B of this questionnaire asks you 12 multiple choice questions about information which you may, or may not, have seen at some point during the trial. Even if you did not see this information, it is important that you still *answer every question* to the best of your ability. Even if you do not know the correct answer, your responses are still very helpful. More than one answer may be partially correct, but you are required to determine the *best* or *most correct* answer in each case. When you have made your selection, circle the appropriate letter. Answer all questions, and choose only one answer per question. If you change your mind, please make your final choice clear.

1. Which of the following most accurately describes the process of Motor Neurone Disease?
a) The muscle tissue gradually wastes away, so the nerve impulses reaching the muscles no longer activate any movement.
b) The impulses generated by cells in the brain and spinal cord gradually weaken, so they are no longer strong enough to activate movement in the muscles.
c) The cells which generate impulses (which in turn cause muscle movement) degenerate, such that the impulses are no longer transmitted and the muscles waste away.
d) The brain generates impulses to activate muscle activity, but these impulses are blocked by fluid in the spinal cord, so the muscles waste away because they are no longer being activated.

2. In order to find the accused guilty of manslaughter...
a) the prosecution ***must*** prove that she intended to cause bodily harm to the deceased
b) the accused must have been aware that her act was likely to cause bodily harm
c) an act which the accused committed must have caused death
d) it must be proved that the accused both intended to cause death or bodily harm, ***and*** that the accused's act is commonly known to be likely to cause death or bodily harm.

3. The main differentiating feature of Primary Lateral Sclerosis (a sub-type of Motor Neuron Disease) is:
a) Primary Lateral Sclerosis always develops into Amyotrophic Lateral Sclerosis.
b) Primary Lateral Sclerosis affects only the upper limbs
c) Primary Lateral Sclerosis affects only the lower motor neurons
d) Primary Lateral Sclerosis affects only the upper motor neurons

4. Which of the following statements is most accurate?
a) in order to constitute bodily harm (as required by a manslaughter charge), the injury must be permanent.
b) Manslaughter can still be proved, even if the accused herself did not know her act was commonly likely to cause death or bodily injury.
c) if the deceased consents to their own death, the accused cannot be held responsible.
d) the accused cannot be found guilty of manslaughter if she intended to cause death

5. Which of the following plays a key role in the development of Motor Neuron Disease?
a) Lack of muscle condition
b) Difficulties with muscle contractibility
c) Poor neural function
d) Mitochondrial dysfunction

6. Which of the following is NOT necessary to prove manslaughter?
a) that the accused committed the act which caused the deceased's death
b) that the accused knew her act was likely to cause death or bodily harm
c) that the accused either intended to cause death or bodily harm, or did an act which was commonly known to be likely to cause death or bodily harm
d) that the accused's act was conscious and voluntary

7. How is the drug Creatine thought to work?
a) By preventing further neuronal degeneration & reversing the progression of the disease
b) By strengthening the muscles
c) By targeting mitochondrial dysfunction
d) By simply making the patients feel healthier and stronger

8. According to its legal definition, bodily harm...
a) must be permanent
b) can range from being transient to being permanent
c) must interfere with health or comfort
d) can be any hurt or injury, even if it is brief

9. Which of the following is most accurate?
a) Amyotrophic Lateral Sclerosis often develops into Primary Lateral Sclerosis
b) Clinical trials of the drug Creatine have failed to demonstrate clinically significant gains
c) There are two main sub-types of Motor Neuron Disease
d) The drug Creatine was able to reverse Motor Neuron Disease in only ***some*** patients.

10. According to its legal definition, ***likely*** to cause death or bodily harm refers to...
a) any act which might result in death or bodily harm
b) an act which has ***either*** a real chance ***or*** a remote chance of causing death or bodily harm
c) an act which has a real chance of causing death or bodily harm
d) an act which can be shown to have caused death or bodily harm more often than not.

11. Amyotrophic Lateral Sclerosis...
a) is a rare sub-type of Motor Neuron Disease
b) mainly causes weakness in the lower limbs
c) causes degeneration in both the upper and the lower motor neurons
d) has been shown to respond well to the drug Creatine

12. Which of the following statements is most accurate:

a) the test of whether something is commonly known to be likely to cause death or bodily harm is an objective one.
b) the accused can be found guilty of both murder and manslaughter simultaneously
c) a very minor injury which causes a very minor degree of distress can still constitute bodily harm, according to the legal definition of the term
d) in order to prove the charge of manslaughter, it must be proved ***both*** that the accused intended to cause death or bodily harm, ***and*** that the accused's act is an act which is commonly known to be likely to cause death or bodily harm

Part D of this questionnaire consists of 5 multiple choice questions, which present you with a novel scenario and require you to apply legal principles which you may, or may not, have learned about during the trial. Even if you did not see this information, it is important that you still *answer every question* to the best of your ability. Even if you do not know the correct answer, your responses are still very helpful. More than one answer may be partially correct, but you are required to determine the *best* or *most correct* answer in each case. When you have made your selection, circle the appropriate letter. Answer all questions, and choose only one answer per question. If you change your mind, please make your final choice clear.

1. Jacob and Kieran were throwing wine corks into a bucket. Kieran started to fool around with the corks and threw one directly at Jacob's back. Unfortunately, the cork hit Jacob in the back of his neck, near his spine, and badly damaged a disc in Jacob's spine, causing leakage of spinal fluid, resulting in Jacob's death.

Kieran has been charged with manslaughter contrary to s156(2)(a) of the Tasmanian Criminal Code, but was found not guilty. According to the elements of the crime of manslaughter, what is the most likely reason for this?

a) Manslaughter could not be proved because Kieran did not intend to cause death or bodily harm to Jacob
b) Manslaughter could not be proved because Jacob's injury does not fit the legal definition of bodily harm.
c) Manslaughter could not be proved because Kieran's act could not be proved to be commonly known to be likely to cause death or bodily harm
d) Manslaughter could not be proved because Kieran's act was not voluntary.

2. Judy and Lisa were practising javelin throwing for an upcoming athletics tournament. While Lisa was measuring the distance of one of Judy's throws, Judy decided to throw her javelin at Lisa for her to catch. Lisa was taken by surprise and the javelin hit her in the chest, and Lisa died as a result. Judy explains that she never intended to cause Lisa any harm whatsoever, and was just fooling around.

Judy is charged with manslaughter contrary to section 156(2)(a) of the Tasmanian Criminal Code. Which of the following would be the most legally accurate verdict according to the elements of the crime of manslaughter?

a) Not guilty because Judy did not intend to cause death or bodily harm to Lisa.
b) Not guilty because Judy's act was not voluntary.
c) Guilty because Judy acted recklessly in a dangerous situation.

d) Guilty, because Judy's act is one which is commonly known to be likely to cause death or bodily harm.

3. James and Stephen were involved in a street wrestling match which got out of hand. James knocked Stephen to the ground, and continued to punch him repeatedly about the neck and head. Stephen died as a result of the injuries he sustained, but James states that he never intended to harm Stephen – he was just continuing with the boxing match. He thought that because Stephen was an experienced boxer, his punches would not cause serious harm.

James has been charged with manslaughter contrary to s156(2)(a) of the Tasmanian Criminal Code. Which of the following is *most* correct?

a) It will be difficult to prove that James is guilty of manslaughter, because he did not intend to cause death or bodily harm to Stephen.
b) It will be difficult to prove that James is guilty of manslaughter, because he was not aware that his actions could result in death or bodily harm.
c) It should be possible to prove that James is guilty of manslaughter because it could be demonstrated that repeated punching about the head and neck is commonly known to be likely to cause death or bodily harm.
d) It will be difficult to prove that James is guilty of manslaughter, because Stephen consented to the possibility of death when he agreed to take part in the boxing match.

4. Craig found out that his business partner, Andrew, had been embezzling money from the company. In a rage, Craig took a gun with him to Andrew's house and, finding Andrew in the backyard, aimed at him and fired a bullet. Andrew threw himself to the ground, narrowly missing the bullet. Craig told police that he wanted to kill Andrew, and that if he hadn't ducked, he would probably be dead now.

If Craig was charged with manslaughter contrary to s156(2)(a) of the Tasmanian Criminal Code, what would the most legally accurate verdict be?

a) Not guilty, because Craig's act is not commonly known to be likely to cause death or bodily harm.
b) Guilty, because Craig clearly committed an act intending to cause death or bodily harm.
c) Not guilty, because Craig did not commit an act causing death or bodily harm.
d) Guilty, because shooting a gun has a real and not remote chance of causing death or bodily harm.

5. Jim suffered from a mental disorder which resulted in unpredictable episodes of extreme violence and psychosis. Jim was afraid that he would harm his wife or children during one of these episodes, and no longer wished to live because of this, but did not think he could take his own life. As such, he asked his friend Sean to put an overdose of sleeping tablets in some food or drink, so that Jim would not have to do it himself. Though he disagreed with Jim's decision to end his life, Sean carried out Jim's wish.

Sean has been charged with manslaughter contrary to s156(2)(a) of the Tasmanian Criminal Code. What is the most legally accurate verdict?

a) Not guilty, because Sean did not intend to cause death or bodily harm.
b) Guilty because Sean's act is commonly known to be likely to cause death or bodily harm.
c) Not guilty, because Jim consented to his own death by asking Jim to poison him.
d) Not guilty because Sean's act was not voluntary.

Appendix P

Experiment 4 Trial Transcripts

Evidence complexity transcript.

Clerk of the Court: Jane Mitchell, you are charged on the first count that you, on the 2nd of August 2002 at Newtown in the State of Tasmania, murdered Stephen Taylor, contrary to section 157(1)(a) of the Tasmanian Criminal Code. How do you plead?

Not guilty.

You are further charged in the alternative that you, on the 2nd of August 2002 at Newtown in the State of Tasmania, instigated or aided Stephen Taylor to suicide, contrary to section 163 of the Tasmanian Criminal Code. How do you plead?

Not guilty.

Opening Statements:

Crown Prosecutor (Louise King): Thank you, Your Honour. The indictment contains two charges; the first alleges that the accused, Ms Mitchell, murdered Stephen Taylor. That is charge one. In the alternative, the accused is charged that she instigated or aided Mr Taylor to suicide.

I represent the Crown in these proceedings and it is the Crown who has the obligation of proving the accused's guilt and proving it beyond reasonable doubt. Not only does guilt have to be established beyond reasonable doubt, but in the process, each of the elements of the offences has to be established beyond reasonable doubt. If the Crown fails to do this, the accused is entitled to be acquitted. That is fundamental.

The accused, ladies and gentlemen, does not have to prove her innocence. She is presumed innocent.

Whatever views you hold about assisted suicide or euthanasia, it is critical that you must not permit them to intrude into your sworn duty to determine whether or not criminal offences have been committed. To assist another to suicide is a criminal offence just as taking a life with intent is a criminal offence.

So, as I said, the first charge of the indictment charges that the accused murdered Stephen Taylor; that is, she did an act with the intention of killing Mr Taylor and her act in fact caused Mr Taylor's death. The second charge is that she instigated or aided Mr Taylor to suicide. That means that the accused was present when Mr Taylor committed suicide, and that this accused intentionally encouraged Mr Taylor to commit the acts causing his own death or expressed agreement and approval by her words or conduct.

During 2001, the deceased, Mr Taylor, was diagnosed as suffering from Motor Neurone Disease. This is a disease that affects the sufferer's mobility and capacity to speak. It is progressive, degenerative, and there is no known cure.

At the time of his diagnosis, the deceased was in a relationship with the accused. They were lovers; they had been for some years. They jointly owned and operated a florist business. The progress of Mr Taylor's disease was monitored and maintained under Dr Greene's care, the treating doctor, and the accused was the deceased's full time carer. The accused also maintained the florist business.

On the first of February 2002 at one of Dr Greene's visits to Mr Taylor's home in Newtown, Mr Taylor informed Dr Greene of his intentions to organise his own death. So, seven or so months before Mr Taylor died, there were open discussions about assisted suicide.

On 30 April 2002, Mr Taylor executed a Will. Ms Mitchell, the accused, was the principle beneficiary under that Will. On May 2 2002, a month or so later, Mr Taylor recorded himself on a video, where he talked about his views, at that time, regarding his condition, how he was suffering and how he wished to bring an end to his life.

On 10 July 2002 the accused rang Mr Taylor's daughter, Sister Christine Taylor, who was living in Dublin, Ireland. She was informed that her father was extremely unwell, and it was suggested that she make a visit to see him. She arrived in Sydney on July 15 2002.

A few days after Sister arrives to visit her father there is an open discussion between the deceased, the accused and the daughter about Mr Taylor's suicide plans. Sister is a member of an order of Nuns, and has strong personal and religious based views as to the sanctity of life. She expresses those views openly to her father.

Something very important happens on the Crown case three days after that conversation. That is, Mr Taylor changes his mind. He has been affected very much by his daughter's reaction, and in deference to her and her faith, he says he has changed his mind and won't go through with the planned suicide.

Shortly after this, Mr Taylor decides he wants to have a birthday party and that party is convened or planned for August 2nd, some week or so later. The party started about four in the afternoon and most people were gone within a couple of hours. The last guest to leave was Sister. The deceased very simply bid his daughter good night as she departed, leaving only the accused in the deceased's company.

What happens between 6.30pm and about 9.45pm is sourced solely from the accused. She told police that in effect, Stephen said that this was a good time to go, that he intended to take his own life. He asked to be put to bed. He asked to be provided with some sedative, Valium, under prescription from Dr Greene. He was given it, and according to the accused, the deceased asked to be given the Exit-Bag or E-Bag. This is a fairly simple device; it is a plastic bag with an elasticised opening. The person wanting to commit suicide is intended to take a heavy sedative dose, put the bag over their head and hold it open. And then when the person lapses into unconsciousness because of the drugs taken, their hand slips away, the bag's elasticised opening closes and the oxygen runs out; that is how the bag is intended to be used. It is available from a group called the Exit Group. The design of the bag is such that the person wishing to take their own life can do so themselves, without assistance.

Ms Mitchell, the accused, leaves her partner's bedroom, and returns a couple of hours later to find Mr Taylor, deceased.

The Crown intend to prove the first count on the indictment by establishing to your satisfaction that this accused made the scene appear as if a suicide had taken place. It is the Crown case that this accused was motivated by mercenary motives to kill Mr Taylor, that she had used the opportunity of the party to ply him with liquor, that she overdosed him with Valium and that she slipped the E-Bag over the deceased's face.

The Crown will establish to your satisfaction, we submit, that the deceased was incapable, physically incapable of placing the bag over his head or over his face such as to suffocate himself.

We will ultimately establish that when Mr Taylor retracted his intention to suicide to his daughter, he had in fact changed his mind.

In the event that you are not satisfied that the Crown has established murder, the Crown says that you will at the very least find established beyond reasonable doubt that this accused instigated or aided Mr Taylor's suicide; that she was present when the deceased committed the act causing his own death, sedation followed by putting the bag over his face, and that she assisted by opening the pill container, containing the sedatives, and she obtained the bag and brought it to the bedside. If you find those facts established, you would be bound to find the second count proved. Thank you.

Defence Counsel (Mr Wilson): Thank you, Your Honour. I'm only going to speak to you now very briefly on just some key aspects of the evidence on which the defence in this case will be relying.

The young woman whom we represent is a woman who has never been in any sort of trouble with the law in her life, and yet against her there is one of the most serious charges known to be levelled: murder. Mr Taylor clearly formed an intention to commit suicide because of his desperate condition. The Crown, however, wants you to believe that he later changed his mind. When he died, therefore, the prosecution wants you to find that he could not have wanted to do it, so it must have been done by someone else and the accused, the prosecution says, has to be the someone else.

You will hear evidence that when Mr Taylor explained his intention to his daughter, she was very upset and shortly afterwards, a couple of days or so, he told her that he changed his mind. She was overjoyed at that. But you will also hear in the evidence that he had prepared a number of things to assist his suicide. He had obtained the bag which you have heard about, he had written a farewell letter to her, and he had made a videotape, expressing his final wishes; it will be obvious to you when you hear that evidence that although the prosecution wants you to accept that he changed his mind, he kept the bag, he kept the letter, and he kept the videotape.

The other important element in the case is the proposition that he could not have done it himself anyway, he must have had some physical assistance. This is what is relied on by the prosecution in support of the charge of assisting. He must have been assisted they say, because he could not have done it himself.

I won't address in detail now the medical evidence you will hear on that, but that will be evidence, not of fact, but of opinion, and an opinion which in the end the defence will say to you is the sort of opinion on which even the best experts can disagree.

Those, members of the jury, are two key aspects of their case. That, on behalf of Ms Mitchell, is all that I wish to put before you as key aspects on which the defence will be focusing. Thank you.

Crown Witness 1: John Reid

Examination in Chief

Crown Prosecutor: Could you please state your full name and rank for the record.
A: My name is John Reid, and I am a Detective Inspector.

Q: On the second of August 2002, did you at about 10.35pm that evening as a result of a telephone call, go to 100 Crescent Lane, Newtown?

A: Yes, that's right. Sister Christine, Dr Greene and the accused, Ms Mitchell, and the body of the deceased were all at the house. I asked what had happened, and Sister Christine pointed at the accused and said, "she caused my father's death".

Q: What did Ms Mitchell say?
A: She stood still and made no reply. I then said, "how did he die?" and she moved to the end of the bed, raised a bed cover slightly, exposing a plastic bag which I recognised as an Exit Bag.

Q: Did you find in the bedroom a videotape which was labelled on the spine, "my last testament."?
A: Yes, we found it on the mantel piece.

Q: We have here a copy of the transcript of that video – would you read it out for me please?
A: Yes. "By the time anyone sees this, I will be dead. I am recording this now while I still can. I am deteriorating rapidly. It isn't any sort of life and I want to end it while I still have some dignity left. Because of the cruel laws of this country no one is allowed to help me die peacefully, so I am forced to do it myself. Christine, my beloved daughter, please forgive me. And please forgive my faithful partner, Jane, for her complicity. I've arranged it so she is not part of it and can't be charged with anything. Goodbye and thank you all for your love and help."

Q: Thank you. That is the evidence of this witness.

Cross-Examination:

Defence Counsel:. Detective Inspector Reid. Is it true that Sister Christine, Mr Taylor's daughter, had told you some things about Mr Taylor's Will?
A: Yes, shortly after I arrived at the house.

Q: You didn't ask her that though, did you? She just came out and told you that, didn't she?
A: I was asking her some general background questions when she mentioned those matters.

Q: But you had not mentioned a Will yourself, had you?
A: No.

Q: You also said to Ms Mitchell in your first interview with her that the doctor had said that Mr Taylor didn't have the strength to put the bag over his head; do you remember if you used those words "over his head"?
A: Yes.

Q: What you had in mind in asking that question was Mr Taylor putting the bag literally over his head, down around his neck?
A: Yes.

Q: And it was that specific action that the doctor had told you he didn't believe Mr Taylor had the strength to do?
A: I can only say what the doctor said.

Q: You had not at that stage raised with the doctor what Ms Mitchell told you in the interview had happened and that is that the bag was only over his face, and not completely over his head?
A: That's correct.

Q: As a result of this matter you made some enquiries into Ms Mitchell's background, and you have certainly established to your own satisfaction that she has never been in any sort of trouble with the law in her life?
A: Yes, no criminal convictions.

Q: Thank you.

Witness retired and excused.

Crown Witness 2: Dr Simon Greene

Examination in Chief

Crown Prosecutor: Could you please state your full name, and explain your medical qualifications for the court?
A: Certainly. My name is Simon Greene. I hold a Bachelor of Medicine, and I am a legally registered medical practitioner in this state. I have practiced as a GP for around 20 years, and in that time I have been the attending physician for many Motor Neurone Disease patients.

Q: So, you had a doctor/patient relationship with the deceased in this case?
A: Ah yes. I had known him for many years.

Q: Mr Taylor was diagnosed in 2001 with Motor Neurone Disease, is that correct?
A: Yes.

Q: Is there any known cure for that condition?
A: No, it's a progressive destructive disease of muscle and neuron and normally a relentless progress to death, usually within two to three years.

Q: From the time when Mr Taylor was house bound, around September 2001, was he in need of constant care in your assessment?
A: Oh yes, he needed assistance with almost all daily activity. At least by that February when I saw him, he would not have been able to clean his teeth on his own. He had difficulty getting around so, yes, he would have needed assistance with eating, and with cleaning himself.

Q: Do you recall a visit in February of 2002 where there was a conversation about euthanasia?
A: Yes, I recall that very clearly.

Q: Who was it that actually raised with you the question of easing the passage of death?

A: I believe it was Ms Mitchell. She said something like, is there anything we can do to hasten the end? Or make it easier? The first thing I did was to ask Stephen what he felt about this.

Q: What did he say?
A: Well, he was still able to speak quite clearly at that stage and he was certainly in sound mind and he said; I can't go on like this. Or; I can't continue like that. He seemed interested in my opinion.

Q: According to your records, you attended Mr Taylor at his home on the 5th of July 2002. Can you give your assessment of his physical condition at that time?
A: Well, I was doing a house call at lunch time and Mr Taylor was receiving some food at that stage and I was shocked that he was needing assistance with absolutely everything. He was profoundly weak. He was not in the chair but in bed at that stage I think. He was being supported by a neck brace, and was being offered his food via a straw rather than to his lips, but he was conscious and alert and he knew what was happening.

Q: Do I understand you to say then, doctor, that in your view as at July 2002, Mr Taylor could not lift his hand to his face?
A: Well, he may have been able to lift his hand to his face but he certainly couldn't have had anything in his hand, because he was so weak.

Q: Before we go to the 2nd of August, there is one thing I need to ask you. Did you prescribe medication of any kind?
A: Yes, I did. I prescribed him some Valium for sedation so he had it available to him at all times to assist with relaxation and for sleep. He would have been taking one or two a day, under my orders. Stephen was also involved in a clinical trial testing the effectiveness of a drug called Creatine, but the prescription for that didn't come from me.

Q: So, turning now to the evening of 2nd of August 2002. When you arrived at the deceased's home following Jane's phonecall, you found Mr Taylor in bed and in your view, when had he had died?
A: Well, I examined the body, and I determined that Mr Taylor had passed away within the previous two hours.

Q: No further questions.

Cross-examination:

Defence Counsel: Doctor, you observed on a number of occasions Ms Mitchell taking care of Mr Taylor, didn't you?
A: Yes, that's correct.

Q: She did it extremely well, didn't she?
A: Yes, I believe she did.

Q: Your assessment of Mr Taylor on the 5th of July which you have just described was by way of your professional opinion, wasn't it?
A: Yes.

Q: And you do acknowledge, don't you doctor, that in matters of professional opinion, even experts sometimes disagree?
A: Yes, certainly.

Q: When you observed Mr Taylor on the 5th of July, he was just doing his normal daily activities, correct?
A: Yes.

Q: You didn't ask him to do anything for the purpose of demonstrating to you, did you?
A: Well, no, because he was already doing it. He was being fed and feeding himself as much as he could, so I was able to observe that interaction.

Q: So you didn't say to him or no one said to him, while you were there, would you please summon all your concentration and all your strength for one last desperate effort and see what you can do?
A: No, I didn't ask that.

Q: And if he had been asked to do that, and he had tried to do that in response, it's most likely, isn't it, that he would have been able to do more than you saw him do on that day?
A: Well, he may have done a little more, yes, with supreme effort, it's possible.

Q: Doctor, to put it briefly, it is possible that you are in error in your estimate of how much he was capable of doing, isn't it?
A: Yes, I may be in error to a degree, certainly.

Q: To a substantial degree?
A: Well, look, I could be wrong to a certain degree, but he certainly couldn't have run across the room or anything like that. In terms of what he could do with his hands, you're correct, I could be in error to a certain degree.

Q: Isn't it also possible that the drug Mr Taylor was taking as part of a clinical trial may have had some beneficial effect? Possibly slowing some muscle deterioration?
A: The Creatine? No, I don't think so. This is a drug which has been investigated several times now, and no one has found any improvement in muscle strength, or any other outcome measure, so I don't think that's a possibility we should consider.

Q: Now, if I understood your earlier evidence correctly, you don't believe that on the day you saw him, he would have been capable, for example, of holding a glass in his hand, his hand being at about mid chest height. Is that correct?
A: Yes, I didn't think he would be capable of that.

Q: Would you have a look please at photo number two Dr Greene. This photo was taken at Mr Taylor's birthday party, on August the 2nd (Handed.) Now, you see in that photo, Mr Taylor?
A: Yes.

Q: And you see him holding a glass, independently, out from his body?
A: Ah, well, yes, he appears to be.

Q: He is holding it slightly above mid-chest height, isn't he?
A: Well, he is in a chair but yes, he is holding it at mid chest height.

Q: When you saw him on 5th July, you didn't think he would be capable of doing that then, let alone on the 2nd of August, did you?
A: Well, no, I didn't, I suppose.

Q: Doctor, on the night when you attended and found Mr Taylor dead, you were asked by the police your opinion as to his ability to put an E-Bag over his head, weren't you?
A: Yes, that's right.

Q: Meaning fully over his head was how you understood it, wasn't it?
A: I understood it to mean the bag would have gone up to the top of his head and back down the other side, yes.

Q: And you gave the police the opinion that you didn't think he could have done that?
A: That's right.

Q: You were not considering that proposition as to whether he could have got the bag over his face alone, were you?
A: That's true, I wasn't considering that.

Q: That would take rather less effort, wouldn't it?
A: Look, I'm really not sure about that. You would have to still raise it to the same height and it's just not my field. It only takes slightly more effort to get over the top, as to get it up to the top. I'm a doctor, not a physiologist.

Q: Is it fair to say that this is outside your area of expertise?
A: To say whether it would be easier, yes.

Q: Well, do you agree with this: That there would be a very significant difference between the amount of effort required to get the bag fully over his head in the upright position, as compared to the amount of effort to get the bag over his face once his head had fallen forward.
A: Yes, I would agree with that proposition.

Q: Let's turn to Valium or Diazepam for a moment. You prescribed that in five milligram tablets?
A: That is correct.

Q: The deceased had a very high level of that in his blood at the time of his death, requiring an ingestion of something between 20 and 40 of those five milligram tablets?
A: So I have been told.

Q: Those tablets are not easily soluble, are they?
A: No, they don't dissolve in water. In fact, they don't really dissolve easily in any liquid.

Q: If they're crushed up they're extremely unpalatable, very unpleasant to taste?
A: I understand people have tried that and they've told me it tastes ghastly.

Q: So it is not at all easy to imagine any way in which anyone could ingest that number of those tablets unless it was voluntary, that is correct, isn't it?
A: Yes, I think that's fair to say.

Q: You can't force that many tablets down an unwilling person's throat, can you?
A: No, not really.

Q: Thank you.

Re-examination:

Crown Prosecutor: As far as the design of the E-Bag is concerned, it is correct, is it not, that it is essential that the bag be draped over the head or face to create a seal, is that right?
A: Yes, that's my understanding of the principle of this device.

Q: My learned friend Mr Wilson spoke about the apparent unpleasant taste of Valium when crushed; would you expect whiskey to cloak or cloud the unpleasantness of the taste were the tablets crushed in whiskey?
A: Look, I really couldn't answer that directly.

Q: No further questions.

Witness retired and excused.

Crown Witness 3: Phillip Butler

Examination in Chief:

Crown Prosecutor: Could you please state your full name, and list your medical qualifications for us?
A: My name is Phillip Butler. I am a legally registered medical practitioner in this State, I hold a Bachelor of Medicine and a Bachelor of Surgery. I am a member of the fellowship of the Royal College of Pathologists of Australasia and I also have a diploma of medical jurisprudence in forensic pathology.

Q: You were shown the body of the fully dressed male lying in a bed – what did you determine on examination of the body?
A: I determined that he was dead, and that post-mortem lividity and rigor mortis had set in, indicating to me that death had occurred some few hours earlier. Blood is pumped around the body normally during life, but of course after death when the circulation stops, blood starts to settle and the red blood cells which give blood its colour tend to settle in the lower parts of the body, giving lividity or redness over the lower parts – that is post-mortem lividity. When the muscles, prior to the blood supply ceasing to work, harden, this gives us rigor mortis, which is stiffening of muscles.

Q: Let's turn to the post mortem you conducted on the deceased. What was the result of your examination on the body?
A: I made observation, of the musculature, particularly the upper and lower limbs, and observed that there was considerable wastage of muscles in that region.

Q: The deceased's blood alcohol reading from the blood samples taken was 0.08, is that so?
A: Yep, that is correct. That would be considered a mid range blood alcohol content.

Q: The concentration of Valium in the blood was what?
A: It was 2.9 milligrams per litre of blood.

Q: Is that concentration a modest range or a harmful range, can you say?
A: Well, in a normal healthy person we would consider a normal range to be somewhere between 0.05 up to 2. So this level is above a normal therapeutic level. A toxic range would be considered to be 3 up to 14. Death doses associated with Valium have occurred at levels above five.

Q: Insofar as the concentration of Valium is concerned, how many individual tablets would need to be ingested to give the reading as reported to you?
A: Well, to some extent it would depend on the person, how they absorb them, their build and so on, but relatively speaking, if we are talking about five milligram tablets then 20 to 40 tablets would be required to produce this blood level.

Q: Having regard to the histological examination of the muscle tissue, and your observation of the limbs macroscopy, by simply looking and making your own visual assessment are you able to predict whether or not Mr Taylor, the deceased, would have been able to lift his arms to chest height prior to death?
A: It is very difficult to make a judgment about how strong a person would be by examining their muscle after death. In accuracy terms, it is sort of like trying to predict whether a sheep was stronger than a lamb chop. However, my examination revealed that there was severe diminution changes which means there was severe loss of nerves applying to the muscles, indicating there would have been severe loss of strength. I think…I think there would have been profound weakness and I think the deceased would have found it profoundly difficult to bring his arms up to chest level. However, in fairness I must say I do not think it would have been impossible.

Q: Let's turn now to the E-Bag. Assuming the bag was placed either over the head or over the face such as to create a seal around the neck, over what period of time would you expect death to occur?
A: There are two considerations here. Firstly, if the bag is sealed either over the face or entirely over the neck, there is only a limited amount of air inside that bag, so a person would breathe that air and eventually all the oxygen would be used up and that person would obviously die. It is difficult to predict in this case how long that would take but certainly less than half an hour and probably only a few minutes. However, the other aspect to consider is that it has certainly been documented in forensic cases that merely occluding the face, merely covering the nose and mouth with a plastic object, can actually result in extremely rapid, if not near instantaneous death.

Q: Are you able to clearly identify the cause of death in this case?
A: Yes, I am able to say that suffocation was the cause of death in this case, but we cannot tell if that was due to the bag being fully over the head, or merely occluding the face.

Q: Thank you very much.

Witness retired and excused.

Crown Witness 4: Christine Taylor

Examination in Chief:

Crown Prosecutor: Could you please state your full name for the record.
A: My name is Christine Taylor.

Q: Sister Christine, you are a Member of an order of nuns which operates in Dublin, is that so?
A: Yes.

Q: And you are Stephen Taylor's daughter?
A: Yes.

Q: When you first saw your father in July 2002, after you arrived in Australia, how was he?
A: I had never seen him look like that before. He had no use of his legs. He had lost most of the movement in his hands and arms. He required a brace to keep his head up. His voice was gone virtually, like it was a whisper. He was mainly bed ridden or in a wheel chair.

Q: Now, a few days after your arrival you had a conversation with Ms Mitchell in your father's presence about assisted suicide? Can you tell the jury about that conversation?
A: Jane said to me that Stephen no longer wishes to live on in this condition. She then said that both of them had been attending a suicide group, looking at how he may end his life peacefully while he still can.

Q: Did you volunteer anything as to your own reaction or position on this question?
A: No, I was shocked, I couldn't say anything.

Q: Do you recall having a conversation with your father about any Will that he may have executed?
A: Yes, I asked him about the Will and I asked him if he would make a bequest on my behalf to the Church. Then he said that his Will did provide a small bequest to my sisterhood. He went on to say that the bulk of his estate would go to Jane.

Q: Now, do I understand Sister, that you were upset at your father's plans with Ms Mitchell to bring about the end of his life?
A: Oh, yes. I told him that I must…that I must do everything in my power to stop him from doing it.

Q: Some time after that was there a further conversation concerning the question of the assisted suicide?
A: Yes, after a few days, dad asked to speak with me. Jane was there and dad basically said, "I haven't taken into account your feelings or your position, I don't want to cause you pain so we have reconsidered". I don't remember exactly what I said, but I was very happy.

Q: Was there anything else said in that conversation about the Will?
A: Yes, he said that he also...he also had news that would make me even happier which was that he planned to change his Will and increase the bequest to the Church.

Q: Now, in the intervening period between that conversation and your father's death, a decision was made to have a birthday party for him on August 2nd?
A: Yes.

Q: Alcohol was consumed at the party?
A: Mm.

Q: Are you able to say how much your father had to drink?
A: Jane was refilling his glass quite often. He was drinking straight whiskey. I would guess he had at least…I would say…four whiskeys.

Q: Did you say anything about this to either your father or to Ms Mitchell?
A: Yes, I said to Jane that she was encouraging my father to drink too much.

Q: Now, can you say about what time you left the party?
A: Approximately six o'clock; I waited until everyone else had left.

Q: Did you speak to your dad before you left?
A: Yes, I did. I hugged him and he said that he loved me and then he said "I'm proud to be your father". And then he said "good night my little girl".

Q: At about quarter to ten in the evening after you left, you received a telephone call from Ms Mitchell and she said words to the effect 'at last your father is at peace'?
A: Yes. I drove straight to Dad's house, and I arrived there around 10 o'clock. I said to Jane, how did this happen? She just lifted the edge of the blanket toward the end of the bed and I saw a plastic bag thing.

Q: And you said to Ms Mitchell; "he couldn't have done this by himself. You have done it" is that right?
A: Yes.

Q: Do you remember what she said when you said that?
A: She said; I understand how you feel but it is what he wanted.

Q: Then she handed you a letter?
A: Yes.

Q: Could you read that letter aloud for the jury now?
A: "My dear Christine, I love you and always have. You will be angry with me but I need you to understand that I don't want to go on. I must end my life while I can do

it alone and I hope that I've not left it too late. I know you will grieve about not saying good-bye. I'm sorry but it seems like the only way. I hope you find…I hope you find in your heart to befriend Jane. Without her I would…I would not have had the will to live, or enjoy these last few years. Goodbye my beloved daughter." There is a hand inscription 'dad' with some cross marks.

Q: Thank you. No more questions.

Cross-examination:

Defence Counsel: Sister Christine, one of the things you realised after the event, which you recorded in a statement to the police, was that when you said good-bye, your father said good-bye to you that night, without saying anything about seeing you tomorrow? The reason you recorded that, that way, is that normally he did say something about seeing you tomorrow?
A: Sometimes he would say it and sometimes he didn't.

Q: You disapproved of your father's relationship with Ms Mitchell, didn't you?
A: No. It did not accord with my religious beliefs, but I told dad that I would support him in the decision that he made and it would not change how much I…how much loved him.

Q: You certainly didn't approve of his plan to end his life, did you?
A: Absolutely not.

Q: You told your father very clearly that you were upset about that plan, didn't you?
A: Yes, I strongly disagreed with it. I was incredibly shocked when he told me that that's what he was planning.

Q: Your father didn't like to cause you pain, did he?
A: No, just as any father wouldn't like to cause their child pain.

Q: Now, let's talk about your father's Will. Your father had a successful, and quite valuable florist business, didn't he, which he originally ran with your mother?
A: Yes.

Q: As you understood it that was the bulk of the estate?
A: Well, yes. That was his business and that's where he put his investment.

Q: When you had that discussion about the Will which you have already mentioned, Jane said something of which you have not so far given evidence today, didn't she?
A: Yes, with regard to the divisions of the Will. She said that the florist business was going to come to her even without the Will because she was...well, she and my dad were joint owners of it and that's how they'd planned it.

Q: So the bulk of your father's estate was going to Ms Mitchell, quite apart from the Will as you understood it?
A: Yes.

Q: So the change you were expecting your father to make to his Will, affected only a small part of his estate?

A: Yes.

Q: Now, when Jane phoned you to tell you of your father's death, you did not want to believe that your father had killed himself, did you?
A: I couldn't believe that he would have done it.

Q: And you did not want to believe that your father had deceived you when he told you he had decided to abandon that plan, did you?
A: He had made it plain to me that he had changed his mind about the whole suicide issue.

Q: And you believed him?
A: Absolutely.

Q: And you don't want to believe, even now, that there is any possibility that he was deceiving you when he said that, do you?
A: I don't believe that he would deceive me.

Q: No further questions Your Honour.

No re-examination

Witness retired and excused.

Defence Case:

Defence Witness 1: Dr Georgia Flynn

Examination in Chief:

Defence Counsel: Could you please state your full name and take us through your medical qualifications.
A: My name is Georgia Flynn. I have been a medical practitioner in this state for over ten years now. I have a Bachelor of medicine, and have completed studies in genetics as well. I am now a research fellow at the International Motor Neurone Disease Association Research Foundation.

Q: And what does that position involve?
A: Well, I spend my time dealing with patients suffering from Motor Neurone Disease, and I research the causes of the disease, its varied progression in different patients, things like that. I am currently involved in several clinical trials of drugs which may be able to slow the progression of the disease. That is the main focus of my work at the moment, and I recently presented a paper on it at the international symposium on Motor Neurone Disease.

Q: And you were able to examine the body of the deceased in this case?
A: Yes, I was. I made the observation of the musculature, from an external viewpoint, and could see that there was considerable wastage of muscles. I also performed a histological examination, which is an examination of the muscle tissue under the microscope, and that revealed changes of denervation, which is consistent

with Motor Neurone Disease. Examination of the brain and spinal cord also revealed loss of motor neurone cells which is again consistent with the diagnosis of Motor Neurone Disease.

Q: Did you notice anything which struck you as unusual when examining the body?
A: Yes, I did. I will try to explain it as plainly as possible. Firstly, Motor Neurone Disease, very basically, is an incurable disease of the nervous system, where certain nerve cells in the brain and spinal cord degenerate, or break down, and die. These cells make the muscles work by sending impulses which cause the muscles to move and contract, but when they degenerate, they lose the ability to transmit the impulses, so the impulses gradually get more and more irregular until eventually they stop altogether, then the muscles they control gradually stop working and waste away. So, that is the basic definition of the disease.

But, what a lot of people don't realise is that there are actually four main types of Motor Neurone disease, which each affect people in different ways. So, the description I have just given you refers to the most common form of Motor Neurone Disease, which is otherwise known as Amyotrophic Lateral Sclerosis or ALS. This is where there is degeneration in both the upper and the lower motor neurons, so there is wasting in all of the limbs, and this is the sub-type that the deceased in this case was diagnosed with. There is, however, another sub-type, referred to as Primary Lateral Sclerosis (PLS). This is a rare form of MND which involves the upper motor neurones only, causing mainly weakness in the lower limbs. This means that initially, only the legs are affected, and the upper body is able to function quite normally. Some people may still experience clumsiness in the hands, or speech problems, but the severe muscle wastage characteristic of MND is not present in the upper body.

Q: So, are you suggesting that Stephen Taylor was actually suffering from this sub-type of Motor Neurone Disease?
A: Not exactly. The medical evidence in this case clearly demonstrates that at his death, Mr Taylor was definitely suffering from full blown ALS. But, Primary Lateral Sclerosis, the form which only affects the lower body, often develops into ALS. So, what I am suggesting is that Mr Taylor initially, and very briefly suffered from Primary Lateral Sclerosis, affecting only his lower body, which then developed into ALS, affecting his whole body.

Q: And, can you explain how this is significant for us?
A: Well, what this means is that because the motor neurons controlling the deceased's lower limbs began to degenerate before the motor neurons controlling his upper limbs did, the wastage of the lower limbs should be more extensive and extreme than the wastage in the upper limbs. And I believe my examination of the body post-mortem confirms this; I certainly observed more extensive denervation of the upper neurons, which control the lower limbs, and more extreme wasting of the lower limbs than of the lower neurons and upper limbs, which is consistent with my hypothesis about the deceased's disease progression.

Q: So, how might your opinion differ from that of other medical experts?
A: Well, the other medical experts who are assuming that Stephen suffered full blown ALS right from the beginning, may be underestimating his ability to move his upper limbs. I'm certainly not implying that he would have had next to normal

function in his hands and arms. There still would have been profound weakness, but his range of movement would have been more extensive than someone who had suffered ALS all along.

Q: So they may have underestimated his ability to lift his hands to his head?
A: Yes.

Q: Is there anything else the other medical experts may have failed to take into account?
A: Yes. Mr Taylor was also briefly involved in a clinical trial testing the effectiveness of a drug called Creatine. This is a substance which has really useful anabolic properties, and its cellular mechanisms of action mean that it has great potential for diseases involving mitochondrial dysfunction, like MND. In particular, it may be able to help in terms of facilitating residual muscle contractibility as well as improving neural function. It may also help stabilise mitochondrial dysfunction, which plays a key role in the pathogenesis of MND. So basically, it could prolong survival and preserve motor function and motor neurons.

Q: Dr Greene suggested that there is no hard evidence to suggest that it does have any effect though.
A: And he is correct to an extent. The latest clinical trial was unable to demonstrate *clinically significant* gains, however the progression of the disease did seem to slow in some individual patients, and many patients reported feeling better when they were on Creatine, though the researchers could not explain why.

Q: So, let me see, you're suggesting that Mr Taylor's range of movement may have been affected in some way by the Creatine he was taking?
A: Yes.

Q: I see. So, what is your opinion about Stephen Taylor's ability to lift his hands to his head, either to put the E-Bag right over his head completely, or just over his face.
A: In my experience with MND sufferers, their range of movement can be much greater than might be estimated, so taking into account the less severe denervation of the motor neurons controlling the upper limbs, and the possible benefits of taking Creatine, I would conclude that there is a very distinct possibility that the deceased would have been able to get the E-Bag over his head.

Q: Thank you.

Cross-Examination:

Crown Prosecutor: Would you accept, Dr Flynn, that there can be a great deal of overlap between the sub-types of motor neurone disease, so, while it is useful to separate the various types of the disease, in practice it is not always possible to be so specific?
A: Yes, I would agree with that.

Q: And would you also agree that your diagnosis of Mr Taylor, made simply from examining his body I might add, is a matter of expert opinion only?
A: Yes, it is my opinion.

Q: And, as Mr Wilson has already emphasised, even experts can sometimes disagree in matters of professional opinion?
A: Yes, that's true.

Q: You stated that even though the clinical trials on Creatine have found no clinically significant improvements, it is possible that Mr Taylor experienced some. Is it also possible that he experienced no gains whatsoever as a result of the Creatine?
A: Yes.

Q: And finally, you never had the opportunity that the other medical experts in this case had, to observe Mr Taylor's functioning while he was alive, did you?
A: No, I didn't have that opportunity, as Mr Taylor was not a patient of mine.

Q: So your assessment of his mobility is based solely on your examination of the body, post-mortem, a notoriously inaccurate method?
A: Yes.

Q: Thank you.

Defence Witness 2: Jane Mitchell

Examination in Chief:

Defence Counsel: Please state your full name for the record.
A: My name is Jane Mitchell.

Q: Jane, when did you find out that Stephen was terminally ill?
A: About two years ago. I became Stephen's full time carer when he couldn't do things for himself anymore.

Q: Let's talk about the birthday party you had for Stephen. Who attended the party?
A: Our friends and his daughter, Christine.

Q: When did the guests leave?
A: Umm, maybe around six?

Q: What happened then?
A: Well, Stephen wanted to go to bed, so I wheeled him to the bedroom, and helped him into bed. Then he said to me that he had decided tonight was the night, which I took to mean that he wanted to end his life like he had talked about. His Valium was on the bedside table, and I just administered his regular dose like I always do.

Q: Stephen wrote a letter to his daughter a few weeks prior to the birthday party, didn't he?
A: Yes, Stephen wrote the letter just before Christine came back to Australia, and I printed it out for him. After I had printed it, Stephen asked me for the letter and he signed it.

Q: Now, tell us a little about your dealings with the Exit group.

A: Well, after Stephen had made his decision to end his life on his own terms, he and I discussed his options, and we looked into various groups or organisations which might be able to help us. We came across the Exit group on the internet, and Stephen asked me to arrange a visit and I did. They came over. He was keen and he asked me to organise a bag, so we ordered one together.

Q: And when you put Stephen to bed that night, where was the Exit Bag?
A: It was on the bedside table.

Q: Tell us in your own words, what happened next?
A: Stephen asked me to leave the room, and I did. I went back downstairs, and started to tidy up the mess left from the party; picking up glasses, washing up, dealing with the leftover food and such. About an hour or so later, I went back up to Stephen's room to check on him, and that's when I found him…

Q: And what did you observe?
A: Stephen appeared to be dead, as far as I could tell; he had no pulse, and the E-Bag was over his face.

Q: The Exit Bag was found in the bed. How did it get there?
A: I took it off because I didn't want Christine to have to see it, so I moved it and put it under the blanket.

Q: When she arrived, what happened?
A: We went into the bedroom. And when she realised he was dead she broke down into tears and that's when I just gave her the letter.

Q: So, Jane, let's just confirm; at no point did you assist Stephen in using the Exit Bag, taking more Valium, or doing anything that would result in his suicide?
A: Absolutely not. He asked me to leave the room, which I did out of respect for his wishes. When I left the room he was in bed, and alive. When I returned an hour or so later, he was dead.

Q: Thank you. No further questions Your Honour.

Cross Examination:

Crown Prosecutor: Ms Mitchell, the doctor alleges that Stephen was not capable of using the bag to cover his own head without the help of someone else. What do you say about that?
A: I don't know what to say to that, except that I didn't help him.

Q: And isn't it also true that Stephen wanted to alter his Will in a week or so to increase his bequest to Christine's Church, therefore decreasing the size of the estate left to you?
A: Yes. It was Stephen's Will. He could do whatever he wanted with it.

Q: You understand that the business becomes yours alone on his death?
A: Yes.

Q: It's a fairly profitable business, isn't it?

A: Yes, it is.

Q: The pathology report conducted indicates that at the time of the deceased's death, he had a blood/alcohol level of .08. That's quite a high amount of alcohol, wouldn't you agree?
A: I suppose so.

Q: The pathologist's report also indicates a very high level of Valium - 2.9 mg/ltr. How do you think this was so high if you only administered the usual night-time dose?
A: I don't know.

Q: No further questions.

Closing Statements:

Defence Counsel: Thank you, Your Honour. Ladies and gentlemen: one very quick glance at this case quickly demonstrates that there are numerous gaps in the evidence: let me point some of these out for you. Number 1: the medical evidence as to what Mr Taylor was physically capable of is inconclusive to say the least. Not one of the witnesses was able to say with any certainty that Mr Taylor would not have been able to raise his hands up to his head. In addition, you have also heard evidence that Mr Taylor did not even need to get the bag up and over his head to succeed in his wish to suicide; had he just draped the bag over his face, this too could have resulted in suffocation. Number 2: the Crown have suggested that Mr Taylor changed his mind about his very strong wish to commit suicide, however, they cannot explain why then, Mr Taylor kept a copy of the goodbye letter to his daughter, why he kept the video explaining his desire to suicide, and why he kept the E-Bag, which can be used for no other purpose than to suicide. And number 3, the Crown have not produced a shred of evidence to suggest that Ms Mitchell remained in the room with Mr Taylor as he ended his life, and if she was not present, it is difficult to imagine how Ms Mitchell can be convicted of anything. All of this evidence is so inconclusive, it simply cannot be relied upon to prove anything beyond a reasonable doubt.

When this complete lack of evidence is considered in combination with the fact that the accused is a woman without any previous criminal record, and who has been a faithful and caring partner who has had to watch her lover deteriorate mentally and physically before her eyes, it is very difficult to imagine that anyone could be convinced of either of these charges beyond a reasonable doubt. Quite simply, the prosecution has failed to prove either the charge of murder, or the charge of instigating or aiding suicide beyond a reasonable doubt, leaving you with no choice other than to find Ms Mitchell not guilty on both counts. Thank you.

Crown Prosecutor: Thank you, Your Honour. Ladies and gentlemen of the jury. What you have heard here today is the story of a murder. Despite what Mr Wilson has tried to suggest, I'm sure you can see that the hard evidence in this case paints a very different picture. The medical evidence clearly proves beyond a reasonable doubt, that the accused intentionally caused the death of the deceased. Although the accused and the deceased had discussed the possibility of suicide, you have heard evidence that Mr Stephen Taylor changed his mind, that he no longer wished to end

his own life. You have also heard medical evidence that Mr Taylor's ability to lift his hands above chest level was severely impaired, so much so, that it seems ridiculous to imagine a man who is suffering the later stages of Motor Neurone Disease, who has had a fair amount of whiskey, and has a large quantity of sedatives in his blood, being able to lift a plastic bag up and over his head and down over his face. According to that evidence then, you must conclude that since Mr Taylor was unable to accomplish this himself, someone must have helped him, and all the evidence points to that someone being the accused – Ms Mitchell. If this alone is not convincing enough, do not forget that Ms Mitchell was the principle beneficiary under Mr Taylor's Will, and would become a wealthy woman following Mr Taylor's death. If you accept this evidence beyond reasonable doubt, you must convict the accused of murder. If, however, you are not convinced beyond a reasonable doubt that the accused murdered the deceased, you must, at the very least, be convinced that the accused instigated or aided Mr Taylor to suicide. It is very important for me to emphasise that no matter what you believe about euthanasia or assisted suicide, you must put it aside to make your decision; it is a crime to assist someone to suicide, just as it is a crime to murder someone – that is what you must remember when making this decision. Once again, the medical evidence clearly shows that Mr Taylor was incapable of getting the E-Bag over his head on his own – he must have had some physical assistance, and that assistance must have come from the accused. Therefore, by helping Mr Taylor take his own life, by assisting him with something he was physically incapable of doing himself, the accused has clearly aided Mr Taylor's suicide. Of that, there is no question. I therefore urge you to come to the obvious conclusion: that if the accused is not a murderer, she is at the very least guilty of instigating or aiding suicide. Thank you.

Length complexity transcript.

Clerk of the Court: Jane Mitchell, you are charged on the first count that you, on the 2nd of August 2002 at Newtown in the State of Tasmania, murdered Stephen Taylor, contrary to section 157(1)(a) of the Tasmanian Criminal Code. How do you plead?

Not guilty.

You are further charged in the alternative that you, on the 2nd of August 2002 at Newtown in the State of Tasmania, instigated or aided Stephen Taylor to suicide, contrary to section 163 of the Tasmanian Criminal Code. How do you plead?

Not guilty.

Opening Statements:

Crown Prosecutor (Louise King): Thankyou, Your Honour. The indictment contains two charges; the first alleges that the accused, Ms Mitchell, murdered Stephen Taylor. That is charge one. In the alternative, the accused is charged that she instigated or aided Mr Taylor to suicide.

I represent the Crown in these proceedings and it is the Crown who has the obligation of proving the accused's guilt and proving it beyond reasonable doubt. Not only does guilt have to be established beyond reasonable doubt, but in the process, each of the elements of the offences has to be established beyond reasonable doubt. If the Crown fails to do this, the accused is entitled to be acquitted. That is fundamental.

The accused, ladies and gentlemen, does not have to prove her innocence. She is presumed innocent.

Whatever views you hold about assisted suicide or euthanasia, it is critical that you must not permit them to intrude into your sworn duty to determine whether or not criminal offences have been committed. To assist another to suicide is a criminal offence just as taking a life with intent is a criminal offence.

So, as I said, the first charge of the indictment charges that the accused murdered Stephen Taylor; that is, she did an act with the intention of killing Mr Taylor and her act in fact caused Mr Taylor's death. The second charge is that she instigated or aided Mr Taylor to suicide. That means that the accused was present when Mr Taylor committed suicide, and that this accused intentionally encouraged Mr Taylor to commit the acts causing his own death or expressed agreement and approval by her words or conduct.

During 2001, the deceased, Mr Taylor, was diagnosed as suffering from Motor Neurone Disease. This is a disease that affects the sufferer's mobility and capacity to speak. It is progressive, degenerative, and there is no known cure.

At the time of his diagnosis, the deceased was in a relationship with the accused. They were lovers, they had been for some years. They jointly owned and operated a florist business. The progress of Mr Taylor's disease was monitored and maintained under Dr Greene's care, the treating doctor, and the accused was the deceased's full time carer. The accused also maintained the florist business.

On the first of February 2002 at one of Dr Greene's visits to Mr Taylor's home in Newtown, Mr Taylor informed Dr Greene of his intentions to organise his own death. So, seven or so months before Mr Taylor died, there were open discussions about assisted suicide.

On 30 April 2002, Mr Taylor executed a Will. Ms Mitchell, the accused, was the principle beneficiary under that Will. On May 2 2002, a month or so later, Mr Taylor recorded himself on a video, where he talked about his views, at that time, regarding his condition, how he was suffering and how he wished to bring an end to his life.

On 10 July 2002 the accused rang Mr Taylor's daughter, Sister Christine Taylor, who was living in Dublin, Ireland. She was informed that her father was extremely unwell, and it was suggested that she make a visit to see him. She arrived in Sydney on July 15 2002.

A few days after Sister arrives to visit her father there is an open discussion between the deceased, the accused and the daughter about Mr Taylor's suicide plans. Sister is a member of an order of Nuns, and has strong personal and religious based views as to the sanctity of life. She expresses those views openly to her father.

Something very important happens on the Crown case three days after that conversation. That is, Mr Taylor changes his mind. He has been affected very much by his daughter's reaction, and in deference to her and her faith, he says he has changed his mind and he won't go through with the planned suicide.

Shortly after this, Mr Taylor decides he wants to have a birthday party and that party is convened or planned for August 2nd, some week or so later. The party started about four in the afternoon and most people were gone within a couple of hours. The last guest to leave was Sister. The deceased very simply bid his daughter good night as she departed, leaving only the accused in the deceased's company.

What happens between 6.30pm and about 9.45pm is sourced solely from the accused. She told police that in effect, Stephen, said that this was a good time to go, that he intended to take his own life. He asked to be put to bed. He asked to be provided with some sedative, Valium, under prescription from Dr Greene. He was given it, and according to the accused, the deceased asked to be given the Exit-Bag or E-Bag. This is a fairly simple device; it is a plastic bag with an elasticised opening. The person wanting to commit suicide is intended to take a heavy sedative dose, put the bag over their head and hold it open. And then when the person lapses into unconsciousness because of the drugs taken, their hand slips away, the bag's elasticised opening closes and the oxygen runs out; that is how the bag is intended to be used. It is available from a group called the Exit Group. The design of the bag is such that the person wishing to take their own life can do so themselves, without assistance

Ms Mitchell, the accused, leaves her partner's bedroom, and returns a couple of hours later to find Mr Taylor, deceased.

The Crown intend to prove the first count on the indictment by establishing to your satisfaction that this accused made the scene appear as if a suicide had taken place. It is the Crown case that this accused was motivated by mercenary motives to kill Mr Taylor, that she used the opportunity of the party to ply him with liquor, that she overdosed him with Valium and that she slipped the E-Bag over the deceased's face.

The Crown will establish to your satisfaction, we submit, that the deceased was incapable, physically incapable of placing the bag over his head or over his face such as to suffocate himself.

We will ultimately establish that when Mr Taylor retracted his intention to suicide to his daughter, he had in fact changed his mind.

In the event that you are not satisfied that the Crown has established murder, the Crown says that you will at the very least find established beyond reasonable doubt that this accused instigated or aided Mr Taylor's suicide; that she was present

when the deceased committed the act causing his own death, sedation followed by putting the bag over his face, and that she assisted by opening the pill container, containing the sedatives, and she obtained the bag and brought it to the bedside. If you find those facts established, you would be bound to find the second count proved. Thank you.

Defence Counsel (Mr Wilson): Thank you, your Honour. I'm only going to speak to you now very briefly on just some key aspects of the evidence on which the defence in this case will be relying.

The young woman whom we represent is a woman who has never been in any sort of trouble with the law in her life, and yet against her there is one of the most serious charges known to be levelled, murder. Mr Taylor clearly formed an intention to commit suicide because of his desperate condition. The Crown, however, wants you to believe that he later changed his mind. When he died, therefore, the prosecution wants you to find that he could not have wanted to do it, so it must have been done by someone else, and the accused, the prosecution says, has to be the someone else.

You will hear evidence that when Mr Taylor explained his intention to his daughter, she was very upset and shortly afterwards, a couple of days or so, he told her that he changed his mind. She was overjoyed at that. But you will also hear in the evidence that he had prepared a number of things to assist his suicide. He had obtained the bag which you have heard about, he had written a farewell letter to her, and he had made a videotape expressing his final wishes; it will be obvious to you when you hear that evidence that although the prosecution wants you to accept that he changed his mind, he kept the bag, he kept the letter, and he kept the videotape.

The other important element in the case is the proposition that he could not have done it himself anyway, he must have had some physical assistance. This is what is relied on by the prosecution in support of the charge of assisting. He must have been assisted they say, because he could not have done it himself.

I won't address in detail now the medical evidence you will hear on that, but that will be evidence, not of fact, but of opinion, and an opinion which in the end the defence will say to you is the sort of opinion on which even the best experts can disagree.

Those, members of the jury, are two key aspects of their case. That, on behalf of Ms Mitchell, is all that I wish to put before you as key aspects on which the defence will be focusing. Thankyou.

Crown Witness 1: John Reid

Examination in Chief

Crown Prosecutor: Could you please state your full name and rank for the record.
A: My name is John Reid, and I am a Detective Inspector.

Q: On the second of August 2002, did you at about 10.35pm that evening as a result of a telephone call, go to 100 Crescent Lane, Newtown?
A: Yes, that's right. Sister Christine, Dr Greene and the accused, Ms Mitchell, and the body of the deceased were all at the house. I asked what had happened, and Sister Christine pointed at the accused and said, "she caused my father's death".

Q: What did Ms Mitchell say?

A: She stood still and made no reply. I then said, "how did he die?" and she moved to the end of the bed, raised a bed cover slightly, exposing a plastic bag which I recognised as an Exit Bag.

Q: Did you find in the bedroom a videotape which was labelled on the spine, "my last testament."?
A: Yes, we found it on the mantel piece.

Q: We have here a copy of the transcript of that video – would you read it out for me please?
A: Yes. "By the time anyone sees this, I will be dead. I am recording this now while I still can. I am deteriorating rapidly. It isn't any sort of life and I want to end it while I still have some dignity left. Because of the cruel laws of this country no one is allowed to help me die peacefully, so I am forced to do it myself. Christine, my beloved daughter, please forgive me. And please forgive my faithful partner, Jane, for her complicity. I've arranged it so she is not part of it and can't be charged with anything. Goodbye and thank you all for your love and help."

Crown Prosecutor: Thank you. That is the evidence of this witness.

Cross-Examination:

Defence Counsel:. Detective Inspector Reid, is it true that Sister Christine, Mr Taylor's daughter, had told you some things about Mr Taylor's Will?
A: Yes, shortly after I arrived at the house.

Q: You didn't ask her that though, did you? She just came out and told you that, didn't she?
A: I was asking her some general background questions when she mentioned those matters.

Q: But you had not mentioned a Will yourself, had you?
A: No.

Q: You also said to Ms Mitchell in your first interview with her that the doctor had said that Mr Taylor didn't have the strength to put the bag over his head; do you remember if you used those words "over his head"?
A: Yes.

Q: What you had in mind in asking that question was Mr Taylor putting the bag literally over his head, down around his neck?
A: Yes.

Q: And it was that specific action that the doctor had told you he didn't believe Mr Taylor had the strength to do?
A: I can only say what the doctor said.

Q: You had not at that stage raised with the doctor what Ms Mitchell told you in the interview had happened and that is that the bag was only over his face, and not completely over his head?
A: That's correct.

Q: As a result of this matter you made some enquiries into Ms Mitchell's background, and you have certainly established to your own satisfaction that she has never been in any sort of trouble with the law in her life?
A: Yes, no criminal convictions.

Q: Thank you.

Witness retired and excused.

Crown Witness 2: Dr Simon Greene

Examination in Chief

Crown Prosecutor: Could you please state your full name, and explain your medical qualifications for the court?
A: Certainly. My name is Simon Greene. I hold a Bachelor of Medicine, and I am a legally registered medical practitioner in this state. I have practiced as a GP for around 20 years, and in that time I have been the attending physician for many Motor Neurone Disease patients.

Q: So, you had a doctor/patient relationship with the deceased in this case?
A: Ah yes. I had known him for many years.

Q: Mr Taylor was diagnosed in 2001 with Motor Neurone Disease, is that correct?
A: Yes.

Q: Is there any known cure for that condition?
A: No, it's a progressive destructive disease of muscle and neuron and normally a relentless progress to death, usually within two to three years.

Q: From the time when Mr Taylor was house bound, around September 2001, was he in need of constant care in your assessment?
A: Oh yes, he needed assistance with almost all daily activity. At least by that February when I saw him, he would not have been able to clean his teeth on his own. He had difficulty getting around so, yes, he would have needed assistance with eating, and with cleaning himself.

Q: Do you recall a visit in February of 2002 where there was a conversation about euthanasia?
A: Yes, I recall that very clearly.

Q: Who was it that actually raised with you the question of easing the passage of death?
A: I believe it was Ms Mitchell. She said something like, is there anything we can do to hasten the end? Or make it easier? The first thing I did was to ask Stephen what he felt about this.

Q: What did he say?

A: Well, he was still able to speak quite clearly at that stage and he was certainly in sound mind and he said; I can't go on like this. Or; I can't continue like that. He seemed interested in my opinion.

Q: According to your records, you attended Mr Taylor at his home on the 5th of July 2002. Can you give your assessment of his physical condition at that time?
A: Well, I was doing a house call at lunch time and Mr Taylor was receiving some food at that stage and I was shocked that he was needing assistance with absolutely everything. He was profoundly weak. He was not in the chair but in bed, at that stage I think. He was being supported by a neck brace, and was being offered his food via a straw rather than to his lips, but he was conscious and alert and he knew what was happening.

Q: Do I understand you to say then, doctor, that in your view as at July 2002, Mr Taylor could not lift his hand to his face?
A: Well, he may have been able to lift his hand to his face but he certainly couldn't have had anything in his hand, because he was so weak.

Q: Before we go to 2 August, there is one thing I need to ask you. Did you prescribe medication of any kind?
A: Yes, I did. I prescribed some Valium for sedation and so he had it available to him at all times to assist with relaxation and for his sleep. He would have been taking one or two a day, under my orders.

Q: So, turning now to the evening of the 2nd August 2002. When you arrived at the deceased's home following Jane's phonecall, you found Mr Taylor in bed and in your view, when had he had died?
A: Well, I examined the body, and I determined that Mr Taylor had passed away within the previous two hours.

Q: No further questions.

Cross-examination:

Defence Counsel: Doctor, you observed on a number of occasions Ms Mitchell taking care of Mr Taylor, didn't you?
A: Yes, that's correct.

Q: She did it extremely well, didn't she?
A: Yes, I believe she did.

Q: Your assessment of Mr Taylor on the 5th of July which you just described was by way of your professional opinion, wasn't it?
A: Yes.

Q: And you do acknowledge, don't you doctor, that in matters of professional opinion, even experts sometimes disagree?
A: Yes, certainly.

Q: When you observed Mr Taylor on the 5th of July, he was just doing his normal daily activities, correct?

A: Yes.

Q: You didn't ask him to do anything for the purpose of demonstrating to you, did you?
A: Well, no, because he was already doing it. He was being fed and feeding himself as much as he could, so I was able to observe that interaction.

Q: So you didn't say to him or no one said to him, while you were there, would you please summon all your concentration and all your strength for just one last desperate effort and see what you can do?
A: No, I didn't ask that.

Q: And if he had been asked to do that, and he had tried to do that in response, it's most likely, isn't it, that he would have been able to do more than you saw him do on that day?
A: Well, he may have done a little more, yes, with supreme effort, it's possible.

Q: Doctor, to put it briefly, it is possible that you are in error in your estimate of how much he was capable of doing, isn't it?
A: Well, yes, I may be in error to a degree, certainly.

Q: To a substantial degree?
A: Well, look, I could be wrong to a certain degree, but he certainly couldn't have run across the room or anything like that. In terms of what he could do with his hands, you're correct, I could be in error to a certain degree.

Q: Now, if I understood your earlier evidence correctly, you don't believe that on the day you saw him, he would have been capable, for example, of holding a glass in his hand, his hand being at about mid chest height. Is that correct?
A: Yes, I didn't think he would be capable of that.

Q: Would you have a look please at photograph number two Dr Greene. This photo was taken at Mr Taylor's birthday party, on August the 2nd (Handed.) Now, you see in that photo, Mr Taylor?
A: Yes.

Q: And you see him holding a glass, independently, out from his body?
A: Well, yes, he appears to be.

Q: He is holding it slightly above mid-chest height, isn't he?
A: Well, he is in a chair but, yes, he is holding it at mid chest height.

Q: When you saw him on 5th July, you didn't think he would be capable of doing that then, let alone on the 2nd August, did you?
A: Well, no, I didn't, I suppose.

Q: Doctor, on the night when you attended and found Mr Taylor dead, you were asked by the police your opinion as to his ability to put an E-Bag over his head, weren't you?
A: Yes, that's right.

Q: Meaning fully over his head was how you understood it, wasn't it?
A: I understood it to mean the bag would have gone up to the top of his head and back down the other side, yes.

Q: And you gave the police the opinion that you didn't think he could have done that?
A: That's right.

Q: You were not considering that proposition as to whether he could have got the bag over his face alone, were you?
A: That's true, I wasn't considering that.

Q: That would take rather less effort, wouldn't it?
A: Look, I'm really not sure about that. You would have to still raise it to the same height and it's just not my field. It only takes slightly more effort to get over the top, as to get it up to the top. I'm a doctor, not a physiologist.

Q: Is it fair to say this is outside your area of expertise?
A: To say whether it would be easier, yes.

Q: Well, do you agree with this: That there would be a very significant difference between the amount of effort required to get the bag fully over his head in the upright position, as compared to the amount of effort to get the bag over his face once his head had fallen forward.
A: Yes, I would agree with that proposition.

Q: Let's turn to Valium or Diazepam for a moment. You prescribed that in five milligram tablets?
A: That is correct.

Q: The deceased had a very high level of that in his blood at the time of his death, requiring an ingestion of something between 20 and 40 of those five milligram tablets?
A: So I have been told.

Q: Those tablets are not easily soluble, are they?
A: No, they don't dissolve in water. In fact, they don't really dissolve easily in any liquid.

Q: If they're crushed up they're extremely unpalatable, very unpleasant to taste?
A: I understand people have tried that and they've told me it tastes ghastly.

Q: So it is not at all easy to imagine any way in which anyone could ingest that number of those tablets unless it was voluntary, that is correct, isn't it?
A: Yes, I think that is fair to say.

Q: You can't force that many tablets down an unwilling person's throat, can you?
A: No, not really.

Q: Thank you.

Re-examination:

Crown Prosecutor: As far as the design of the E-Bag is concerned, it is correct, is it not, that it is essential that the bag be draped over the head or face to create a seal, is that right?
A: Yes, that's my understanding of the principle of the device.

Q: My learned friend Mr Wilson spoke about the apparent unpleasant taste of Valium when crushed; would you expect whiskey to cloak or cloud the unpleasantness of the taste were the tablets crushed in whiskey?
A: Look, I really couldn't answer that directly.

Q: No further questions.

Witness retired and excused.

Crown Witness 3: Alice Kelly

Crown Prosecutor: Could you please state your full name and profession for the record.
A: My name is Alice Kelly, and I am an Aged Care Assistant.

Q: What exactly does that involve?
A: Well, basically I visit older people in their homes who are unable to care for themselves. I help out around the house, I do various household chores, like helping with the washing, ironing, dusting, vacuuming, that kind of thing. I don't actually care for the elderly person, but I help out with things around the house which the carer might not have time to do while they are looking after the elderly person full time. I do have first aid qualifications, so I can help out if there's an emergency or I can ask basic questions about the elderly person's health. Sometimes the carer might get me to help them get the patient into bed, or into a bath, or something else that might require two people. Things like that.

Q: How long have you been working in this industry?
A: I have been working these kinds of jobs now for around 25 years.

Q: So would you say that you have a lot of experience dealing with elderly people who are unwell?
A: Yes, I think so.

Q: You work for a number of different patients during the week?
A: Yes, I generally work a 70 hour fortnight. I visit about 3 different patients a day and spend around 2hrs at each house. The hours can be a bit funny, because sometimes I need to be at a particular patient's house at bedtime so I can help them get into bed.

Q: So, if you're seeing an average of three patients a day, and working 6 days a week, that would mean that you see about 18 patients on average within a week. Is that right?
A: Yes, that's right.

Q: And what sorts of disorders do some of your clients have?
A: Well, a couple of them have dementia, one of them has recently suffered quite a bad stroke, two of them have advanced stage cancers, one has MS, and I also see two other patients who have Motor Neurone Disease, like Mr Taylor.

Q: How long have you been working for the accused and the deceased?
A: Well, Jane had employed me a few months after Stephen's diagnosis, because she knew that any spare time she had for housework was soon going to be taken up caring for Stephen. So, it was around December 2001 when I started, so I worked for them for about 10 months.

Q: And in your position as cleaner or as an assistant, you would see Mr Taylor for at least a couple of hours, every week?
A: Yes, that's right. Often there wasn't too much housework for me to do if Jane had had a chance to do some, so sometimes I would just have a little sit down with Stephen, and have a chat with him. He liked to talk to me, when he still could, and when his speech wasn't so good any more, he seemed happy to listen while I told him about my kids, and my husband.

Q: You mentioned before when describing your job that sometimes you help a patient's carer with some patient-related jobs. Did you help Jane with Stephen at all?
A: Yes. On the nights I was there, I would sometimes help Jane get Stephen into bed. If Jane had a quick job to do, or wanted to sit down and have a quick meal, I would help to feed Stephen.

Q: You visited Stephen and Jane for your normal shift on the 28th of July, just a few days before the birthday party in question, is that right?
A: Yes, I was there from 5 till 8, for my normal shift.

Q: What can you tell us about Stephen's condition at that stage?
A: Well, he had deteriorated quite badly by that point. The condition had not affected him too much until February 2002, when he was bed-bound, and from then on, he just went downhill quite quickly. Every time I visited them, he seemed a little worse. It was very noticeable, and very sad. When I saw him on that last shift before the birthday party, he was in his wheelchair, with his neck-brace on, trying to eat some broth Jane had prepared for him. The bowl was on a tray attached to the arm of the wheelchair, and Stephen was sucking it through a straw.

Q: In your opinion then, would Stephen have been capable of lifting something entirely over his head?
A: Well, I had seen Stephen support the weight of a glass of water, but only when it was held against his body, and I hadn't even seen him do that for some months, so as far as I'm concerned, I just don't think he would have been able to get his arms up that far.

Q: Thank you.

Cross-Examination:

Defence Counsel: Alice, you observed Jane caring for Stephen for a few hours every week, is that right?

A: Yes, that's right.

Q: Did you think she did a good job caring for him?
A: Yes, I think so. She was very attentive, and always trying to keep Mr Taylor happy, making jokes and things.

Q: So, would you describe Jane as a loving, caring partner?
A: I suppose so.

Q: You mentioned before that Jane gave up a lot of her spare time to be with and care for Stephen?
A: Yes, that's right.

Q: Quite a sacrifice?
A: Yes, I suppose it is a sacrifice.

Q: Moving on to your assessment of Stephen's range of movement. You said that you didn't think Stephen would be capable of lifting his hands far enough to get something over his head. Now, would Stephen ever have had the need to put his arms over his head while you were present?
A: Umm, I'm not really sure.

Q: Well, were you ever with Mr Taylor when he needed to scratch his head, or do something that required him to lift his hands above his head?
A: I don't really know.

Q: Did you ever actually ask him to raise his hands above chest height?
A: Well, no.

Q: Did you ask him to summon every reserve of strength he had left to raise his arms above chest height?
A: No, of course not.

Q: Do you admit then, that it might be possible he would have been capable of this movement, if his life, as such, depended upon it.
A: Well, anything's possible I suppose. But I think it's very unlikely.

Q: Ok. Tell me about your medical qualifications, Alice.
A: I have a first aid certificate.

Q: Any other formal qualifications?
A: Not formal ones, no.

Q: You've never been trained as a nurse?
A: No.

Q: As an aged care worker?
A: No.

Q: So, aside from a first aid certificate, you have no formal qualifications or knowledge which may guide you in an assessment of Stephen Taylor's range of movement?
A: No, I don't.

Q: Thank you. No further questions, your Honour.

Re-Examination:

Crown Prosecution: You worked for the accused and the deceased for how long?
A: For about 10 months.

Q: And throughout that time, you saw Mr Taylor consistently, every week, for a couple of hours?
A: Yes, I did.

Q: Do you think spending that amount of time with someone with a chronic illness qualifies you to comment on their mobility?
A: Yes, I do actually.

Q: Thanks. No further questions.

Witness retired and excused.

Crown Witness 4: Phillip Butler

Examination in Chief:

Crown Prosecutor: Could you please state your full name, and list your medical qualifications for us?
A: My name is Phillip Butler. I am a legally registered medical practitioner in this State, I hold a Bachelor of Medicine and Bachelor of Surgery, I am a member of the fellowship of the Royal College of Pathologists of Australasia and I also have a diploma of medical jurisprudence in forensic pathology.

Q: Let's turn to the post mortem you conducted on the deceased. What was the result of your examination of the body?
A: I made observation, of the musculature, particularly the upper and lower limbs, and observed that there was considerable wastage of muscles in that region.

Q: The deceased's blood alcohol reading from the blood samples taken was 0.08, is that so?
A: That is correct. That would be considered a mid range blood alcohol content.

Q: The concentration of Valium in the blood was what?
A: It was 2.9 milligrams per litre of blood.

Q: Is that concentration a modest range or a harmful range, can you say?
A: Well, in a normal healthy person we would consider a normal range to be somewhere between 0.05 up to 2. So this level is above a normal therapeutic level. A

toxic range would be considered to be 3 up to 14. Death doses associated with Valium have occurred at levels above five.

Q: Insofar as the concentration of Valium is concerned, how many individual tablets would need to be ingested to give the reading as reported to you?
A: Well, to some extent it would depend on the person, how they absorb them, their build and so on, but relatively speaking, if we are talking about five milligram tablets then 20 to 40 tablets would be required to produce this blood level.

Q: Having regard to the histological examination of the muscle tissue, and your observation of the limbs macroscopy, by simply looking and making your own visual assessment are you able to predict whether or not Mr Taylor, the deceased, would have been able to lift his arms to chest height prior to death?
A: It is very difficult to make a judgment about how strong a person would be by examining their muscle after death. In accuracy terms, it is sort of like trying to predict whether a sheep was stronger than a lamb chop. However, my examination revealed that there was severe diminution changes which means there was severe loss of nerves applying to the muscles, indicating there would have been severe loss of strength. I think…I think there would have been profound weakness and I think the deceased would have found it profoundly difficult to bring his arms up to chest level. However, in fairness I must say I do not think it would have been impossible.

Q: Let's turn now to the E-Bag. Assuming the bag was placed either over the head or over the face such as to create a seal around the neck, over what period of time would you expect death to occur?
A: There are two considerations here. Firstly, if the bag is sealed either over the face or entirely over the neck, there is only a limited amount of air inside that bag, so a person would breathe that air and eventually all the oxygen would be used up and that person would obviously die. It is difficult to predict in this case how long that would take but certainly less than half an hour and probably only a few minutes. However, the other aspect to consider is that it has certainly been documented in forensic cases that merely occluding the face, merely covering the nose and mouth with a plastic object, can actually result in extremely rapid, if not near instantaneous death.

Q: Are you able to clearly identify the cause of death in this case?
A: Yes, I am able to say that suffocation was the cause of death in this case, but we cannot tell if that was due to the bag being fully over the head, or merely occluding the face.

Q: Thank you very much.

Witness retired and excused.

Crown Witness 5: Christine Taylor

Examination in Chief:

Crown Prosecutor: Could you please state your full name for the record.
A: My name is Christine Taylor.

Q: Sister Christine, you are a Member of an order of nuns which operates in Dublin, is that so?
A: Yes.

Q: And you are Stephen Taylor's daughter?
A: Yes.

Q: When you first saw your father in July 2002, after you arrived in Australia, how was he?
A: I had never seen him look like that before. He had no use of his legs. He had lost most of the movement in his hands and arms. He required a brace to keep his head up. His voice was gone, virtually, like it was a whisper. He was mainly bed ridden or in a wheel chair.

Q: Now, a few days after your arrival you had a conversation with Ms Mitchell in your father's presence about assisted suicide? Can you tell the jury about that conversation?
A: Jane said to me that Stephen no longer wishes to live on in this condition. She then said that both of them had been attending a suicide group, looking at how he may end his life peacefully while he still can.

Q: Did you volunteer anything as to your own reaction or position on this question?
A: No, I was shocked, I couldn't say anything.

Q: Do you recall having a conversation with your father about any Will that he may have executed?
A: Yes, I asked him about the Will and I asked him if he would make a bequest on my behalf to the Church. Then he said that his Will did provide a small bequest to my sisterhood. He went on to say that the bulk of his estate would go to Jane.

Q: Now, do I understand Sister, that you were upset at your father's plans with Ms Mitchell to bring about the end of his life?
A: Oh, yes. I told him that I must do…that I must do everything in my power to stop him from doing it.

Q: Some time after that was there a further conversation concerning the question of the assisted suicide?
A: Yes, after a few days, dad asked to speak with me. Jane was there and dad basically said, "I haven't taken into account your feelings or your position, I don't want to cause you pain so we have reconsidered". I don't remember exactly what I said, but I was very happy.

Q: Was there anything else said in that conversation about the Will?
A: Yes, he said that he also…he also had news that would make me even happier which was that he planned to change his Will and increase the bequest to the Church.

Q: Now, in the intervening period between that conversation and your father's death, a decision was made to have a birthday party for him on August 2?
A: Yes.

Q: Alcohol was consumed at the party?

A: Mm.

Q: Are you able to say how much your father had to drink?
A: Jane was refilling his glass quite often. He was drinking straight whiskey. I would guess he had at least…I would say…four whiskeys.

Q: Did you say anything about this to either your father or to Ms Mitchell?
A: Yes, I said to Jane that she was encouraging my father to drink too much.

Q: Now, can you say about what time you left the party?
A: Approximately six o'clock; I waited until everyone else had left.

Q: Did you speak to your dad before you left?
A: Yes, I did. I hugged him and he said that he loved me and then he said "I'm proud to be your father". And then he said "good night my little girl".

Q: At about quarter to ten in the evening after you left, you received a telephone call from Ms Mitchell and she said words to the effect 'at last your father is at peace'?
A: Yes. I drove straight to Dad's house; I arrived there hat around 10 o'clock. I said to Jane, how did this happen? She just lifted the edge of the blanket toward the end of the bed and I saw a plastic bag thing.

Q: And you said to Ms Mitchell; "he couldn't have done this by himself. You have done it" is that right?
A: Yes.

Q: Do you remember what she said when you said that?
A: She said; I understand how you feel but it is what he wanted.

Q: Then she handed you a letter?
A: Yes.

Q: Could you read that letter aloud for the jury now?
A: "My dear Christine, I love you and always have. You will be angry with me but I need you to understand that I don't want to go on. I must end my life while I can do it alone and I hope that I've not left it too late. I know you will grieve about not saying good-bye. I'm sorry but it seems like the only way. I hope you find…I hope you find in your heart to befriend Jane. Without her I would…I would not have had the will to live, or enjoy these last few years. Goodbye my beloved daughter." There is a hand inscription 'dad' with some cross marks.

Q: Thank you. No more questions.

Cross-examination:

Defence Counsel: Sister Christine, one of the things you realised after the event, which you recorded in a statement to the police, was that when you said good-bye, your father said good-bye to you that night, without saying anything about seeing you tomorrow? The reason you recorded that, that way, is that normally he did say something about seeing you tomorrow?
A: Sometimes he would say it and sometimes he didn't.

Q: You disapproved of your father's relationship with Ms Mitchell, didn't you?
A: No. It did not accord with my religious beliefs, but I told dad that I would support him in the decision that he made and it would not change how much I loved him.

Q: You certainly didn't approve of his plan to end his life, did you?
A: Absolutely not.

Q: You told your father very clearly that you were upset about that plan, didn't you?
A: Yes, I strongly disagreed with it. I was incredibly shocked when he told me that that's what he was planning.

Q: Your father didn't like to cause you pain, did he?
A: No, just as any father wouldn't like to cause their child pain.

Q: Now, let's talk about your father's Will. Your father had a successful, and quite valuable florist business, didn't he, which he originally ran with your mother?
A: Yes.

Q: As you understood it that was the bulk of the estate?
A: Well, yes. That was his business and that's where he put his investment.

Q: When you had that discussion about the Will which you have already mentioned, Jane said something of which you have not so far given evidence today, didn't she?
A: Yes, with regard to the divisions of the Will. She said that the florist business was going to come to her even without the Will because she was…well…she and my dad were joint owners of it and that's how they'd planned it.

Q: So the bulk of your father's estate was going to Ms Mitchell, quite apart from the Will as you understood it?
A: Yes.

Q: So the change you were expecting your father to make to his Will, affected only a small part of his estate?
A: Yes.

Q: Now, when Jane phoned you to tell you of your father's death, you did not want to believe that your father had killed himself, did you?
A: I couldn't believe that he would have done it.

Q: And you did not want to believe that your father had deceived you when he told you he had decided to abandon that plan, did you?
A: He had made it plain to me that he had changed his mind about the whole suicide issue.

Q: And you believed him?
A: Absolutely.

Q: And you don't want to believe, even now, that there is any possibility that he was deceiving you when he said that, do you?

A: I don't believe that he would deceive me.

Q: No further questions Your Honour.

No re-examination

Witness retired and excused.

Crown Witness 6: Elizabeth Wakefield

Examination in Chief:

Crown Prosecutor: Could you please state your full name for the record, and tell the court how you knew the accused and the deceased.
A: My name is Elizabeth Wakefield. I am a florist, that's how I met Stephen and Jane. They ran a florist business together, and I would often call into their shop to see their displays, and ring them up to talk about stock availability, and just generally see how business was going. We became friends, and we would see each other socially as well.

Q: You were invited to Stephen's birthday party on the 2nd of August, weren't you?
A: Yes, my husband and I were invited. We were pleased that even though Stephen was so unwell, he was still keen to see all his friends and celebrate his birthday. We thought it was a lovely idea.

Q: So, you arrived around 4pm?
A: Yes, the invitation said the party was to start at 4, and we arrived shortly after that.

Q: How many people were at the party would you say?
A: Probably close to 30?

Q: Did you see Mr Taylor as soon as you arrived?
A: Yes, he was near the door greeting everyone when we arrived.

Q: How did he seem?
A: Quite well, considering. He had a party hat on. He was in his wheelchair, with the neck-brace on, but he was wearing dressy clothes, so Jane had obviously gone to a bit of effort to make him feel special. His speech was quite hard to understand by this stage, but he was smiling and seemed happy to see everyone.

Q: Was the accused nearby?
A: Yes, Jane was with Stephen at the door. She was letting everyone in, making sure they had a drink, and accepting presents for Stephen.

Q: What about Sister Christine Taylor, the deceased's daughter: where was she?
A: She was also standing at the door greeting guests, though it was a bit more difficult for her I imagine, since there were a lot of people there she didn't really know.

Q: What about for the rest of the party?

A: Well, we all moved into the living area eventually, once everyone had arrived. We were gathered in small groups, mostly standing and sitting with other people we knew. Jane stayed with Stephen for most of the party, wheeling him around to different groups, giving him a chance to catch up with everyone.

Q: Was there alcohol available at the party?
A: Yes, we had a choice of champagne, wine, beer.

Q: Was the deceased drinking?
A: Yeah, he was actually. I looked over at him at one stage, and was quite surprised actually to see him sipping on a glass of whiskey, through a straw of course.

Q: You were surprised?
A: Well, yeah. I suppose I had sort of assumed that in his condition, a strong alcoholic drink like whiskey wouldn't be very good. I also knew that he sometimes took Valium, and thought it wouldn't be a good idea to mix the two.

Q: How much do you think the deceased drank throughout the party?
A: It's a bit hard to tell. He had the glass with him for most of the time, but I wasn't really paying attention to how much he was getting through.

Q: So, did you see the accused fill up Mr Taylor's glass at any stage?
A: Yes, once I saw her pouring more into Stephen's glass from a bigger bottle.

Q: Did she seem to be discouraging Mr Taylor's drinking?
A: No, not really. She was laughing as she poured it, and nodding at Stephen.

Q: And you noticed that Sister Christine intervened?
A: Yes. She saw Jane pouring the drink, and she went over and said something to her. She didn't seem very happy; she had an angry expression on her face, so I assumed she didn't think it was a good idea for Stephen to be drinking so much. I couldn't hear what was said, but Jane shook her head and laughed, and kept pouring, and Stephen also said something, and then Christine walked off, so I guess they didn't appreciate her intervention.

Q: What time did you leave the party?
A: About 5:45.

Q: And how many guests were left?
A: Probably still another 6 or 7, but they were saying their goodbyes.

Q: Was Stephen's daughter amongst those remaining guests?
A: Yes, she was still there.

Q: Thank you very much.

Cross-Examination:

Defence Counsel: Mrs Wakefield. You said that alcohol was served at the party, and that you had a choice of wine, champagne, and beer. Is that right?

A: Yes, that's right.

Q: Sounds like a pretty good party.
A: Yeah, I suppose it was.

Q: Were you drinking something alcoholic?
A: Yeah, I was drinking wine.

Q: And your husband?
A: Umm…he had a few beers I think.

Q: What about the other guests that you were sitting with?
A: Well, I didn't pay that much attention, but I'm pretty sure most people at least had a champagne to celebrate.

Q: So, most guests were drinking something alcoholic.
A: Yes, they were.

Q: So, considering that it was a birthday party, and almost every single one of the 30 guests that you can remember was drinking something alcoholic, you still thought it was unusual that Stephen was also sharing in this?
A: Well, yes, I did.

Q: Do you like to have a drink on your birthday, Mrs Wakefield?
A: Yes, but I just thought…

Q: So why should Mr Taylor, a terminally ill man, with a very unpleasant disorder, not be allowed the pleasure of drinking on his birthday?
A: I don't know. I just thought it wouldn't be such a good idea.

Q: Do you know for a fact that alcohol adversely affects sufferers of Motor Neurone Disease?
A: No, I don't.

Q: Now, let's move on to the accused, Ms Mitchell. You said that you saw her fill up Stephen's glass on one occasion.
A: Yeah, that's right.

Q: Did you also see her fill up other guests' glasses?
A: Well, yes, I did.

Q: How many?
A: I couldn't really say…

Q: Did Ms Mitchell fill up your glass?
A: Yeah, she did actually.

Q: How many times?
A: I don't know for sure. Maybe twice?

Q: And did she refill your husband's beer while she was there?

A: Yes.

Q: So, do you think it might be fair to say that as the main host of this birthday party, it was actually Ms Mitchell's *job* or *duty* to fill up people's glasses?
A: I suppose it would be fair to say that.

Q: So maybe it wasn't that unusual to see her filling Mr Taylor's glass, since she was really the only one handing out the drinks?
A: Well, when you put it like, I guess so.

Q: Thank you. No further questions Your Honour.

No Re-examination.
Witness retired and excused.

Defence Case:

Defence Witness 1: Michelle Mitchell

Examination in Chief:

Defence Counsel: Could you please state your full name, and explain your relation to the accused?
A: My name is Michelle Mitchell, and Jane is my sister.

Q: When did you first meet the deceased?
A: Jane introduced me to Stephen shortly after they met, so around 3 years ago?

Q: Were they in a relationship at this stage?
A: No. They were seeing each other, but they were not in a serious relationship yet. Jane was certainly thinking about it though.

Q: And how did you feel about this?
A: I thought it was a good thing, actually. I was really supportive of it, because Jane had been through a really bad time, and she was…she seemed very happy when she was with Stephen, and when she talked about him, so I thought it was a good thing.

Q: You believe that they truly loved each other?
A: Without a doubt. I have never seen Jane talk about anyone else the way she would talk about Stephen. They had such a lot in common, and had such a great time running the business together. They were always making plans for trips they wanted to go on together, and things they would do in the future.

Q: How long after Stephen and Jane began their relationship was Stephen diagnosed?
A: I think they had only been together a little over 18months?

Q: How did Jane react?

A: She was devastated, naturally. She rang me straight away, she was in tears, just beside herself. It was quite a shock, I suppose, and such a blow, because everything had been going along so well for them, with the business and all.

Q: Did Jane discuss with you the possibility of ending the relationship?
A: Jane and I certainly had a lot of in depth discussions about Stephen's illness, and how it would affect them as a couple, but no, I don't think the thought of leaving Stephen ever crossed Jane's mind. As far as she was concerned, they were going to be partners for life, and even though they would probably encounter some terrible times, she knew she wanted to support Stephen through it as much as she could.

Q: What about the issue of euthanasia? Did Jane discuss that with you?
A: Yes, she did. She came to me and was quite upset, because even though she knew that Stephen was suffering, she still couldn't bear the thought of him actually dying. She said that Stephen had spoken to her about it as a possibility, and had asked her to help him get in touch with the Exit group, to get some information and such. That was a really difficult time for Jane, and she had to think about it carefully before she could actually support Stephen with that decision.

Q: Did Jane describe the events of the night in question to you?
A: Yes, of course. I had been at the birthday party, so I had seen them both shortly beforehand. Much later that night, after Jane had returned from the police station, she rang me. It was quite late, well after midnight, and I wondered what was wrong.

Q: What did she say?
A: She told me that when she put Stephen to bed that night, he had said that he wanted to go through with it now, because he'd had such a nice time at the party and was happy, and thought it was a good time to go. Stephen asked her to leave the room after she'd finished doing all the usual bedtime stuff. Jane said that was one of the hardest things to do, to just leave. But, she did, and when she went back to the room, Stephen was gone. Even though she knew Stephen had made his decision months before, Jane was still really upset by it all.

Q: Thank you.

No Cross-Examination. Witness retired and excused.

Defence Witness 2: Jane Mitchell

Examination in Chief:

Defence Counsel: Please state your full name for the record.
A: My name is Jane Mitchell.

Q: Jane, when did you find out that Stephen was terminally ill?
A: About two years ago. I became Stephen's full time carer when he couldn't do things for himself anymore.

Q: Let's talk about the birthday party you had for Stephen. Who attended the party?
A: Our friends and his daughter, Christine.

Q: When did the guests leave?
A: Umm, maybe around six?

Q: What happened then?
A: Well, Stephen wanted to go to bed, so I wheeled him to the bedroom, and helped him into bed. Then he said to me that he had decided tonight was the night, which I took to mean that he wanted to end his life like he had talked about. His Valium was on the bedside table, and I just administered his regular dose like I always do.

Q: Stephen wrote a letter to his daughter a few weeks prior to the birthday party, didn't he?
A: Yes, Stephen wrote the letter just before Christine came back to Australia, and I printed it out for him. After I had printed it, Stephen asked me for the letter and he signed it.

Q: Now, tell us a little about your dealings with the Exit group.
A: Well, after Stephen had made his decision to end his life on his own terms, he and I discussed his options, and we looked into various groups or organisations which might be able to help us. We came across the Exit group on the internet, and Stephen asked me to arrange a visit and I did. They came over. He was keen and he asked me to organise a bag, so we ordered one together.

Q: And when you put Stephen to bed that night, where was the Exit Bag?
A: It was on the bedside table.

Q: Tell us in your own words, what happened next?
A: Stephen asked me to leave the room, and I did. I went back downstairs, and started to tidy up the mess left from the party; picking up glasses, washing up, dealing with the leftover food and such. About an hour or so later, I went back up to Stephen's room to check on him, and that's when I found him…

Q: And what did you observe?
A: Stephen appeared to be dead, as far as I could tell; he had no pulse, and the E-Bag was over his face.

Q: The Exit Bag was found in the bed. How did it get there?
A: I took it off because I didn't want Christine to have to see it, so I moved it and put it under the blanket.

Q: When she arrived, what happened?
A: We went into the bedroom. And when she realised he was dead she broke down into tears and that's when I just gave her the letter.

Q: So, Jane, let's just confirm: at no point did you assist Stephen in using the Exit Bag, taking more Valium, or doing anything that would result in his suicide?
A: Absolutely not. He asked me to leave the room, which I did out of respect for his wishes. When I left the room he was in bed, and alive. When I returned an hour or so later, he was dead.

Q: Thank you. No further questions Your Honour.

Cross Examination:

Crown Prosecutor: Ms Mitchell, the doctor alleges that Stephen was not capable of using the bag to cover his own head without the help of someone else. What do you say about that?
A: I don't know what to say to that, except that I didn't help him.

Q: And isn't it also true that Stephen wanted to alter his Will in a week or so to increase his bequest to Christine's Church, therefore decreasing the size of the estate left to you?
A: Yes. It was Stephen's Will. He could do whatever he wanted with it.

Q: You understand that the business becomes yours alone on his death?
A: Yes.

Q: It's a fairly profitable business, isn't it?
A: Yes, it is.

Q: The pathology report conducted indicates that at the time of the deceased's death, he had a blood/alcohol level of 0.08. That's quite a high amount of alcohol, wouldn't you agree?
A: I suppose so.

Q: The pathologist's report also indicates a very high level of Valium: 2.9 mg/ltr. How do you think this was so high if you only administered the usual night-time dose?
A: I don't know.

Q: No further questions.

Closing Statements:

Defence Counsel: Thank you, Your Honour. Ladies and gentlemen: one very quick glance at this case quickly demonstrates that there are numerous gaps in the evidence: let me point some of these out for you. Number 1: the medical evidence as to what Mr Taylor was physically capable of is inconclusive to say the least. Not one of the witnesses was able to say with any certainty that Mr Taylor would not have been able to raise his hands up to his head. In addition, you have also heard evidence that Mr Taylor did not even need to get the bag up and over his head to succeed in his wish to suicide; had he just draped the bag over his face, this too could have resulted in suffocation. Number 2: the Crown have suggested that Mr Taylor changed his mind about his very strong wish to commit suicide, however, they cannot explain why then, Mr Taylor kept a copy of the goodbye letter to his daughter, why he kept the video explaining his desire to suicide, and why he kept the E-Bag, which can be used for no other purpose than to suicide. And number 3, the Crown have not produced a shred of evidence to suggest that Ms Mitchell remained in the room with Mr Taylor as he ended his life, and if she was not present, it is difficult to imagine how Ms Mitchell can be convicted of anything. All of this evidence is so inconclusive, it simply cannot be relied upon to prove anything beyond a reasonable doubt.

When this complete lack of evidence is considered in combination with the fact that the accused is a woman without any previous criminal record, and who has been a faithful and caring partner who has had to watch her lover deteriorate mentally and physically before her eyes, it is very difficult to imagine that anyone could be convinced of either of these charges beyond a reasonable doubt. Quite simply, the prosecution has failed to prove either the charge of murder, or the charge of instigating or aiding suicide beyond a reasonable doubt, leaving you with no choice other than to find Ms Mitchell not guilty on both counts. Thank you.

Crown Prosecutor: Thank you, Your Honour. Ladies and gentlemen of the jury. What you have heard here today is the story of a murder. Despite what Mr Wilson has tried to suggest, I'm sure you can see that the hard evidence in this case paints a very different picture. The medical evidence clearly proves beyond a reasonable doubt, that the accused intentionally caused the death of the deceased. Although the accused and the deceased had discussed the possibility of suicide, you have heard evidence that Mr Stephen Taylor changed his mind, that he no longer wished to end his own life. You have also heard medical evidence that Mr Taylor's ability to lift his hands above chest level was severely impaired, so much so, that it seems ridiculous to imagine a man who is suffering the later stages of Motor Neurone Disease, who has had a fair amount of whiskey, and has a large quantity of sedatives in his blood, being able to lift a plastic bag up and over his head and down over his face. According to that evidence then, you must conclude that since Mr Taylor was unable to accomplish this himself, someone must have helped him, and all the evidence points to that someone being the accused – Ms Mitchell. If this alone is not convincing enough, do not forget that Ms Mitchell was the principle beneficiary under Mr Taylor's Will, and would become a wealthy woman following Mr Taylor's death. If you accept this evidence beyond reasonable doubt, you must convict the accused of murder. If, however, you are not convinced beyond a reasonable doubt that the accused murdered the deceased, you must, at the very least, be convinced that the accused instigated or aided Mr Taylor to suicide. It is very important for me to emphasise that no matter what you believe about euthanasia or assisted suicide, you must put it aside to make your decision; it is a crime to assist someone to suicide, just as it is a crime to murder someone – that is what you must remember when making this decision. Once again, the medical evidence clearly shows that Mr Taylor was incapable of getting the E-Bag over his head on his own – he must have had some physical assistance, and that assistance must have come from the accused. Therefore, by helping Mr Taylor take his own life, by assisting him with something he was physically incapable of doing himself, the accused has clearly aided Mr Taylor's suicide. Of that, there is no question. I therefore urge you to come to the obvious conclusion: that if the accused is not a murderer, she is at the very least guilty of instigating or aiding suicide. Thank you.

Appendix Q

Experiment 4 Legal Complexity Provided Notes

Trial transcript.

Clerk of Court: Jane Mitchell, you are charged on the first count that you, on the 2nd of August 2002 at Newtown in the State of Tasmania, murdered Stephen Taylor, contrary to section 157(1)(a) of the Tasmanian Criminal Code. How do you plead?

Not guilty.

You are further charged in the alternative that you, on the 2nd of August 2002 at Newtown in the State of Tasmania, unlawfully killed Stephen Taylor, contrary to section 156(2)(a) of the Tasmania Criminal Code. How do you plead?

Not guilty.

You are further charged in the alternative that you, on the 2nd of August 2002 at Newtown in the State of Tasmania, instigated or aided Stephen Taylor to suicide, contrary to section 163 of the Tasmanian Criminal Code. How do you plead?

Not guilty.

Opening Statements:

Crown Prosecutor (Louise King): Thank you, Your Honour. The indictment contains three charges; the first alleges that the accused, Jane Mitchell murdered Stephen Taylor. That is charge one. In the alternative, the accused is charged with manslaughter. That is charge two. As a final alternative, the accused is charged that she instigated or aided Mr Taylor to suicide.

I represent the Crown in these proceedings and it is the Crown who has the obligation of proving the accused's guilt and proving it beyond reasonable doubt. Not only does guilt have to be established beyond reasonable doubt, but in the process, each of the elements of the offences has to be established beyond reasonable doubt. If the Crown fails to do this, the accused is entitled to be acquitted. That is fundamental.

The accused, ladies and gentlemen, does not have to prove her innocence. She is presumed innocent.

Whatever views you hold about assisted suicide or euthanasia, it is critical that you must not permit them to intrude into your sworn duty to determine whether or not criminal offences have been committed. To assist another to suicide is a criminal offence just as taking a life with intent is a criminal offence.

So, as I said, the first charge of the indictment charges that the accused murdered Stephen Taylor, that is, she did an act with the intention of killing Mr Taylor and her act in fact caused Mr Taylor's death. In the alternative, the accused is charged with manslaughter; that is, that she caused the death of the accused even if she did not necessarily intend to do so, by committing an act which is commonly known to be likely to cause death or bodily harm. The third charge is that she instigated or aided Mr Taylor to suicide. That means that the accused was present

when Mr Taylor committed suicide, and that this accused intentionally encouraged Mr Taylor to commit the acts causing his own death and expressed agreement and approval by her words or conduct.

During 2001, the deceased, Mr Taylor, was diagnosed as suffering from Motor Neurone Disease. This is a disease that affects the sufferer's mobility and capacity to speak. It is progressive, degenerative, and there is no known cure.

At the time of his diagnosis, the deceased was in a relationship with the accused. They were lovers; they had been for some years. They jointly owned and operated a florist business. The progress of Mr Taylor's disease was monitored and maintained under Dr Greene's care, the treating doctor, and the accused was the deceased's full time carer. The accused also maintained the florist business.

On the first of February 2002 at one of Dr Greene's visits to Mr Taylor's home in Newtown, Mr Taylor informed Dr Greene of his intentions to organise his own death. So, seven or so months before Mr Taylor died, there were open discussions about assisted suicide.

On the 30th of April 2002, Mr Taylor executed a Will. Ms Mitchell, the accused, was the principle beneficiary under that Will. On May 2nd 2002, a month or so later, Mr Taylor recorded himself on a video, where he talked about his views, at that time, regarding his condition, how he was suffering and how he wished to bring an end to his life.

On the 10th of July 2002 the accused rang Mr Taylor's daughter, Sister Christine Taylor, who was living in Dublin, Ireland. She was informed that her father was extremely unwell, and it was suggested that she make a visit to see him. She arrived in Sydney on July 15 2002.

A few days after Sister arrives to visit her father there is an open discussion between the deceased, the accused and the daughter about Mr Taylor's suicide plans. Sister is a member of an order of Nuns, and has strong personal and religious based views as to the sanctity of life. She expresses those views openly to her father.

Something very important happens on the Crown case three days after that conversation. That is, Mr Taylor changes his mind. He has been affected very much by his daughter's reaction, and in deference to her and her faith, he says he has changed his mind and won't go through with the planned suicide.

Shortly after this, Mr Taylor decides he wants to have a birthday party and that party is convened or planned for August 2nd, some week or so later. The party started about four in the afternoon and most people were gone within a couple of hours. The last guest to leave was Sister. The deceased very simply bid his daughter good night as she departed, leaving only the accused in the deceased's company.

What happens between 6.30pm and about 9.45pm is sourced solely from the accused. According to her, after the party was over, Stephen asked to be put to bed. The accused then administered the normal night-time dose of Valium, and left the deceased to sleep. The Valium bottle was left on the bedside table.

Ms Mitchell, the accused, returns a couple of hours later to find Mr Taylor, deceased. Forensic evidence from the police who arrived on the scene tells us that Mr Taylor's body was in his bed, next to a bedside table with various medications on it. On the floor under the bed was a glass with a straw near it, and an empty bottle of prescribed Valium with the lid off.

The Crown intend to prove the first count on the indictment by establishing to your satisfaction that this accused made the scene appear as if a suicide had taken place. It is the Crown case that this accused was motivated by mercenary motives to kill Mr Taylor, that she used the opportunity of the party to ply him with liquor, and

that she then overdosed him with Valium, knowing that such a large dose would bring about his death.

The Crown will then establish to your satisfaction, we submit, that the deceased was incapable, physically incapable of voluntarily ingesting a sufficient dose of Valium so as to overdose, and we will ultimately establish that when Mr Taylor retracted his intention to suicide to his daughter, he had in fact changed his mind.

In the event that you are not satisfied that the accused assisted the deceased to ingest the drug with the intention of bringing about his death, the Crown submits that you will at least be satisfied that by assisting Mr Taylor to ingest the drug, the accused was engaging in an act which is commonly known to be likely to cause death or bodily harm. So, for example, if you believe the accused administered Mr Taylor with the large Valium dose in the hope of prolonging his rest period or inducing a deeper sleep, this is the sort of scenario which you would consider in relation to the manslaughter charge.

Finally, in the event that you are not satisfied that the Crown has established manslaughter, the Crown says that you will at the very least find established beyond reasonable doubt that this accused instigated or aided Mr Taylor's suicide; that she was present when the deceased committed the act causing his own death, and that she assisted by opening the pill container, containing the sedatives. If you find those facts established, you would be bound to find the third count proved. Thank you.

Defence Counsel (Mr Wilson): Thank you, Your Honour. I'm only going to speak to you now very briefly on just some key aspects of the evidence on which the defence in this case will be relying.

The young woman whom we represent is a woman who has never been in any sort of trouble with the law in her life, and yet against her there is one of the most serious charges known to be levelled: murder. Mr Taylor clearly formed an intention to commit suicide because of his desperate condition. The Crown, however, wants you to believe that he later changed his mind. When he died, therefore, the prosecution wants you to find that he could not have wanted to do it, so it must have been done by someone else and the accused, the prosecution says, has to be the someone else.

You will hear evidence that when Mr Taylor explained his intention to his daughter, she was very upset and shortly afterwards, a couple of days or so, he told her that he changed his mind. She was overjoyed at that. But you will also hear in the evidence that he had prepared a number of things to assist his suicide. He had written a farewell letter to her, and made a video explaining his intentions, and it will be obvious to you when you hear that evidence that although the prosecution wants you to accept that he changed his mind, he kept the letter, and he kept the videotape.

The other important element in the case is the proposition that he could not have done it himself anyway, he must have had some physical assistance. This is what is relied on by the prosecution in support of the charge of assisting. He must have been assisted they say, because he could not have done it himself.

I won't address in detail now the medical evidence you will hear on that, but that will be evidence, not of fact, but of opinion, and an opinion which in the end the defence will say to you is the sort of opinion on which even the best experts can disagree.

Those, members of the jury, are two key aspects of their case. That, on behalf of Ms Mitchell, is all that I wish to put before you as key aspects on which the defence will be focusing. Thank you.

Crown Witness 1: John Reid

Examination in Chief

Crown Prosecutor: Could you please state your full name and rank for the record.
A: My name is John Reid, and I am a Detective Inspector.

Q: On the second of August 2002, did you at about 10.35pm that evening as a result of a telephone call, go to 100 Crescent Lane, Newtown?
A: Yes, that's right. Sister Christine, Dr Greene and the accused, Ms Mitchell, and the body of the deceased were all at the house. I asked what had happened, and Sister Christine pointed at the accused, and said "she caused my father's death."

Q: What did Ms Mitchell say?
A: She stood still and made no reply. I then said, "how did he die?" and she moved to the end of the bed and picked up an empty Valium container.

Q: Did you find in the bedroom a videotape which was labelled on the spine, "my last testament."?
A: Yes, we found it on the mantel piece.

Q: We have here a copy of the transcript of that video – would you read it out for me please?
A: Yes. "By the time anyone sees this, I will be dead. I am recording this now while I still can. I am deteriorating rapidly. It isn't any sort of life and I want to end it while I still have some dignity left. Because of the cruel laws of this country no one is allowed to help me die peacefully, so I am forced to do it myself. Christine, my beloved daughter, please forgive me. And please forgive my faithful partner, Jane, for her complicity. I've arranged it so she is not part of it and can't be charged with anything. Goodbye and thank you all for your love and help."

Q: Thank you. That is the evidence of this witness.

Cross-Examination:

Defence Counsel:. Detective Inspector Reid. Is it true that Sister Christine, Mr Taylor's daughter, had told you some things about Mr Taylor's Will?
A: Yes, shortly after I arrived at the house.

Q: You didn't ask her that though, did you? She just came out and told you that, didn't she?
A: I was asking her some general background questions when she mentioned those matters.

Q: But you had not mentioned a Will yourself, had you?
A: No.

Q: You also said to Ms Mitchell in that first interview that the doctor had said that Mr Taylor didn't have the strength to open the bottle containing the Valium pills. Do you remember if you used those words "open the bottle"?

A: Yes.

Q: So, what you had in mind in asking that question was Mr Taylor actually having to unscrew a lid which was screwed on to the top of the bottle?
A: Yes.

Q: And it was that specific action that the doctor had told you he didn't believe Mr Taylor had the strength to do?
A: I can only say what the doctor said.

Q: You had not at that stage raised with the doctor what Ms Mitchell had told you in the interview – that she did not remember whether she had replaced the cap of the Valium bottle properly, or whether she had simply put the lid on the bottle without screwing it on?
A: That's correct.

Q: As a result of this matter, you made some enquiries into Ms Mitchell's background, and you have certainly established to your own satisfaction that she has never been in any sort of trouble with the law in her life?
A: Yes, no criminal convictions.

Q: Thank you.

No Re-examination: Witness retired and excused.

Crown Witness 2: Dr Simon Greene

Examination in Chief

Crown Prosecutor: Could you please state your full name, and explain your medical qualifications for the court?
A: Certainly. My name is Simon Greene. I hold a Bachelor of Medicine, and I am a legally registered medical practitioner in this state. I have practiced as a GP for around 20 years, and in that time I have been the attending physician for many Motor Neurone Disease patients.

Q: So, you had a doctor/patient relationship with the deceased in this case?
A: Ah yes. I had known him for many years.

Q: Mr Taylor was diagnosed 2001 with Motor Neurone Disease, is that correct?
A: Yes.

Q: Is there any known cure for that condition?
A: No, it's a progressive destructive disease of muscle and neuron and normally a relentless progress to death, usually within two to three years.

Q: From the time when Mr Taylor was housebound, around September 2001, was he in need of constant care in your assessment?
A: Oh yes, he needed assistance with almost all daily activity. At least by that February when I saw him, he would not have been able to clean his teeth on his own.

He had difficulty getting around so, yes, he would have needed assistance with eating, and with cleaning himself.

Q: Do you recall a visit in February of 2002 where there was a conversation about euthanasia?
A: Yes, I recall that very clearly.

Q: Who was it that actually raised with you the question of easing the passage of death?
A: Well, I believe it was Ms Mitchell. She said something like, is there anything we can do to hasten the end? Or make it easier? The first thing I did was to ask Stephen what he felt about this.

Q: What did he say?
A: Well, he was still able to speak quite clearly at that stage and he was certainly in sound mind and he said; I can't go on like this. Or; I can't continue like that. He seemed interested in my opinion.

Q: According to your records, you attended Mr Taylor at his home on the 5th of July 2002. Can you give your assessment of his physical condition at that time?
A: Well, I was doing a house call at lunch time and Mr Taylor was receiving some food at that stage and I was shocked that he was needing assistance with absolutely everything. He was profoundly weak. He was not in the chair but in bed at that stage, I think. He was being supported by a neck brace and was being offered his food via a straw rather than to his lips, but he was conscious and alert and he knew what was happening.

Q: Do I understand you to say then, doctor, that in your view as at July 2002, Mr Taylor could not lift his hand to his face?
A: Well, he may have been able to lift his hand to his face but he certainly couldn't have had anything in his hand, because he was so weak.

Q: Before we go to the 2nd of August, there is one thing I need to ask you. Did you prescribe medication of any kind?
A: Yes, I did. I prescribed some Valium for sedation and so he had it available to him at all times to assist with relaxation and for his sleep. He would have been taking one or two a day, under my orders.

Q: So, turning now to the evening of the 2nd of August 2002. When you arrived at the deceased's home following Jane's phonecall, you found Mr Taylor in bed and in your view, when had he had died?
A: Well, I examined the body, and I determined that Mr Taylor had passed away within the previous two hours.

Q: You asked Ms Mitchell if she knew how Mr Taylor had died and you saw the empty pill bottle on the floor?
A: That is correct.

Q: No further questions.

Cross-examination:

Defence Counsel: Doctor, you observed on a number of occasions Ms Mitchell, taking care of Mr Taylor, didn't you?
A: Yes, that's correct.

Q: She did it extremely well, didn't she?
A: Yes, I believe she did.

Q: Your assessment of Mr Taylor on the 5th of July which you have just described was by way of your professional opinion, wasn't it?
A: Yes.

Q: And you do acknowledge, don't you doctor, that in matters of professional opinion, even experts sometimes disagree?
A: Yes, certainly.

Q: When you observed Mr Taylor on the 5th of July, he was just doing his normal daily activities, correct?
A: Yes.

Q: You didn't ask him to do anything for the purpose of demonstrating to you, did you?
A: Well, no, because he was already doing it. He was being fed and feeding himself as much as he could, so I was able to observe that interaction.

Q: So you didn't say to him or no one said to him, while you were there, would you please summon all your concentration and all your strength for just one last desperate effort and see what you can do?
A: No, I didn't ask that.

Q: And if he had been asked to do that, and he had tried to do that in response, it's most likely, isn't it, that he would have been able to do more than you saw him do on that day?
A: Well, he may have done a little more, yes, with supreme effort, it's possible.

Q: Doctor, to put it briefly, it is possible that you are in error in your estimate of how much he was capable of doing, isn't it?
A: Yes, I may be in error to a degree, certainly.

Q: To a substantial degree?
A: Well, look, I could be wrong to a certain degree, but he certainly couldn't have run across the room or anything like that. In terms of what he could do with his hands, you're correct, I could be in error to a certain degree.

Q: Now, if I understood your earlier evidence correctly, you don't believe that on the day you saw him, he would have been capable, for example, of holding a glass in his hand, his hand being at about mid chest height. Is that correct?
A: Yes, I didn't think he would be capable of that.

Q: Would you have a look please at photo number two Dr Greene. This photo was taken at Mr Taylor's birthday party, on August the 2nd (Handed.) You see in that photo, Mr Taylor?
A: Yes.

Q: And you see him holding a glass, independently, out from his body?
A: Well, yes, he appears to be.

Q: He is holding it slightly above mid-chest height, isn't he?
A: Well, he is in a chair but, yes, he is holding it at mid chest height.

Q: When you saw him on 5th July, you didn't think he would be capable of doing that then, let alone on the 2nd of August, did you?
A: Well no, I didn't, I suppose.

Q: Doctor, on the night when you attended and found Mr Taylor dead, you were asked by the police your opinion as to his ability to open a pill bottle and ingest a number of sedatives, weren't you?
A: Yes, that's right.

Q: And you gave the police the opinion that you didn't think he could have done that?
A: That's right.

Q: Meaning he couldn't actually have unscrewed the lid of a pill bottle?
A: That's right.

Q: You were not considering that proposition as to whether he could have simply lifted the lid off the bottle if it was already unscrewed?
A: Well, that's true, I wasn't considering that.

Q: That would take rather less effort, wouldn't it?
A: Look, I'm really not sure about that. You would have to still perform a complex motor action to just get the lid off. I really don't know; I'm a doctor, not a physiologist.

Q: Is it fair to say this is outside your area of expertise?
A: To say whether it would be easier, yes.

Q: Do you agree with this: That there would be a very significant difference between the amount of effort required to actually unscrew the lid of a pill bottle that was firmly screwed on, as compared to the amount of effort to simply lift the lid off the bottle. That is a very different thing, isn't it doctor?
A: Yes, I would agree with that proposition.

Q: So do you now admit that it might have been possible for Mr Taylor, summoning his last strength in a desperate effort, to lift the lid of the pill bottle if it was not tightly done up?
A: Well, look, I suppose it's possible, but still highly unlikely.

Q: Let's turn to Valium or Diazepam for a moment. You prescribed that in five milligram tablets?
A: That is correct.

Q: The deceased had a very high level of that in his blood at the time of his death, requiring an ingestion of somewhere between 20 and 40 of those five milligram tablets?
A: So I have been told.

Q: Those tablets are not easily soluble, are they?
A: No, they don't dissolve in water. In fact, they don't really dissolve easily in any liquid.

Q: If they're crushed up they're extremely unpalatable, very unpleasant to taste?
A: I understand people have tried that and they've told me it tastes ghastly.

Q: So it is not at all easy to imagine any way in which anyone could ingest that number of those tablets unless it was voluntary, that is correct, isn't it?
A: Yes, I think that is fair to say.

Q: You can't force that many tablets down an unwilling person's throat, can you?
A: No, not really.

Q: Thank you.

Re-examination:

Crown Prosecutor: My learned friend Mr Wilson spoke about the apparent unpleasant taste of Valium when crushed; would you expect whiskey to cloak or cloud the unpleasantness of the taste were the tablets crushed in whiskey?
A: Look, I really couldn't answer that directly.

Q: No further questions.

Witness retired and excused.

Crown Witness 3: Phillip Butler

Examination in Chief:

Crown Prosecutor: Could you please state your full name, and list your medical qualifications for us?
A: My name is Phillip Butler. I am a legally registered medical practitioner in this State, I hold a Bachelor of Medicine and a Bachelor of Surgery. I am a member of the fellowship of the Royal College of Pathologists of Australasia and I also have a diploma of medical jurisprudence in forensic pathology.

Q: Let's turn to the post mortem you conducted on the deceased. What was the result of your examination on the body?
A: I made observation, of the musculature, particularly the upper and lower limbs, and observed that there was considerable wastage of muscles in that region.

Q: The deceased's blood alcohol reading from the blood samples taken was 0.08, is that so?
A: That is correct. That would be considered a mid range blood alcohol content.

Q: The concentration of Valium in the blood was what?
A: It was 6.9 milligrams per litre of blood.

Q: Is that concentration a modest range or a harmful range, can you say?
A: Well, in a normal healthy person we would consider a normal range to be somewhere between 0.05 up to 2. So this is the level above a normal therapeutic level. A toxic range would be considered to be 3 up to 14. Death doses associated with Valium have occurred at levels above five.

Q: Insofar as the concentration of Valium is concerned, how many individual tablets would need to be ingested to give the reading as reported to you?
A: Well, to some extent it would depend on the person, how they absorb them, their build and so on, but relatively speaking, if we are talking about five milligram tablets then 20 to 40 tablets would be required to produce this blood level.

Q: Are you able to say whether or not in the circumstances of this case, that fact was causative of death?
A: Yes, the autopsy demonstrates that the Valium overdose was the cause of death in this case. Valium is a sedative, and when the levels are high enough in the blood, it gradually depresses brain and muscle function, eventually resulting in death, and that is what occurred here.

Q: Having regard to the histological examination of the muscle tissue, and your observation of the limbs macroscopy, by simply looking and making your own visual assessment, are you able to predict whether or not Mr Taylor, the deceased, would have been able to get the lid off the pill bottle?
A: Well, it is very difficult to make a judgment about how strong a person would be by examining their muscle after death. In accuracy terms, it is sort of like trying to predict whether a sheep was stronger than a lamb chop. However, my examination revealed there was severe diminution changes which means there was severe loss of nerves applying to the muscles, indicating there would have been severe loss of strength. I think there would have been profound weakness and I think the deceased would have found it profoundly difficult to bring his arms up to chest level and perform a complex motor task, like opening a pill bottle. However, in fairness I must say I do not think it would have been impossible.

Q: Thank you very much.

No Cross-Examination or Re-Examination

Witness retired and excused.

Crown Witness 4: Christine Taylor

Examination in Chief:

Crown Prosecutor: Could you please state your full name for the record.
A: My name is Christine Taylor.

Q: Sister Christine, you are a member of an order of nuns which operates in Dublin, is that so?
A: Yes.

Q: And you are Stephen Taylor's daughter?
A: Yes.

Q: When you first saw your father in July 2002, after you arrived in Australia, how was he?
A: I had never seen him look like that before. He had no use of his legs. He had lost most of the movement in his hands and arms. He required a brace to keep his head up. His voice was gone, virtually, like it was a whisper. He was mainly bed ridden or in a wheel chair.

Q: Now, a few days after your arrival you had a conversation with Ms Mitchell in your father's presence about assisted suicide? Can you tell the jury about that conversation?
A: Jane said to me that Stephen no longer wishes to live on in this condition. She then said that both of them had been an attending a suicide group, looking at how he may end his life peacefully while he still can.

Q: Did you volunteer anything as to your own reaction or position on this question?
A: No, I was shocked, I couldn't say anything.

Q: Do you recall having a conversation with your father about any Will that he may have executed?
A: Yes, I asked him about the Will, and I asked him if he would make a bequest on my behalf to the Church. Then he said that his Will did provide a small bequest to my sisterhood. He went on to say that the bulk of his estate would go to Jane.

Q: Now, do I understand Sister, that you were upset at your father's plans with Ms Mitchell to bring about the end of his life?
A: Oh, yes. I told him that I must do…that I must do everything in my power to stop him from doing it.

Q: Some time after that was there a further conversation concerning the question of the assisted suicide?
A: Yes, after a few days, dad asked to speak with me. Jane was there and dad basically said, "I haven't taken into account your feelings or your position, I don't want to cause you pain so we have reconsidered". I don't remember exactly what I said, but I was very happy.

Q: Was there anything else said in that conversation about the Will?
A: Yes, he said that he also…he also had news that would make me even happier which was that he planned to change his Will and increase the bequest to the Church.

Q: Now, in the intervening period between that conversation and your father's death, a decision was made to have a birthday party for him on August 2nd?

A: Yes.

Q: Alcohol was consumed at the party?
A: Mm.

Q: Are you able to say how much your father had to drink?
A: Jane was refilling his glass quite often. He was drinking straight whiskey. I would guess he had at least…I would say…four whiskeys.

Q: Did you say anything about this to either your father or to Ms Mitchell?
A: Yes, I said to Jane that she was encouraging my father to drink too much.

Q: Now, can you say about what time you left the party?
A: Approximately six o'clock; I waited until everyone else had left.

Q: Did you speak to your dad before you left?
A: Yes, I did. I hugged him and he said that he loved me and then he said "I'm proud to be your father". And then he said "good night my little girl".

Q: At about quarter to ten in the evening after you left, you received a telephone call from Ms Mitchell and she said words to the effect 'at last your father is at peace'?
A: Yes. I drove straight to Dad's house, and arrived there around 10 o'clock. I said to Jane, how did this happen? She just pointed to an empty pill bottle on the floor.

Q: And you said to Ms Mitchell, "he couldn't have done this by himself. You have done it," is that right?
A: Yes.

Q: Do you remember what she said when you said that?
A: She said; I understand how you feel but it is what he wanted.

Q: Then she handed you a letter?
A: Yes.

Q: Could you read that letter aloud for the jury now?
A: "My dear Christine, I love you and always have. You will be angry with me but I need you to understand that I don't want to go on. I must end my life while I can do it alone and I hope that I've not left it too late. I know you will grieve about not saying good-bye. I'm sorry but it seems like the only way. I hope you find…I hope you find in your heart to befriend Jane. Without her I would…I would not have had the will to live, or enjoy these last few years. Goodbye my beloved daughter." There is a hand inscription 'dad' with some cross marks.

Q: Thank you. No more questions.

Cross-examination:

Defence Counsel: Sister Christine, one of the things you realised after the event, which you recorded in a statement to the police, was that when you said good-bye, your father said good-bye to you that night, without saying anything about seeing

you tomorrow? The reason you recorded that, that way, is that normally he did say something about seeing you tomorrow?
A: Sometimes he would say it and sometimes he didn't.

Q: You disapproved of your father's relationship with Ms Mitchell, didn't you?
A: No. It did not accord with my religious beliefs, but I told dad that I would support him in the decision that he made, and it would not change how much I loved him.

Q: You certainly didn't approve of his plan to end his life, did you?
A: Absolutely not.

Q: You told your father very clearly that you were upset about that plan, didn't you?
A: Yes, I strongly disagreed with it. I was incredibly shocked when he told me that that's what he was planning.

Q: Your father didn't like to cause you pain, did he?
A: No, just as any father wouldn't like to cause their child pain.

Q: Now, let's talk about your father's Will. Your father had a successful, and quite valuable florist business, didn't he, which he originally ran with your mother?
A: Yes.

Q: As you understood it that was the bulk of the estate?
A: Well, yes. That was his business and that's where he put his investment.

Q: When you had that discussion about the Will which you have already mentioned, Jane said something of which you have not so far given evidence today, didn't she?
A: Yes, with regard to the divisions of the Will. She said that the florist business was going to come to her even without the Will because she was…well she and my dad were joint owners of it and that's how they'd planned it.

Q: So the bulk of your father's estate was going to Ms Mitchell, quite apart from the Will as you understood it?
A: Yes.

Q: So the change you were expecting your father to make to his Will, affected only a small part of his estate?
A: Yes.

Q: Now, when Jane phoned you to tell you of your father's death, you did not want to believe that your father had killed himself, did you?
A: I couldn't believe that he would have done it.

Q: And you did not want to believe that your father had deceived you when he told you he had decided to abandon that plan, did you?
A: He had made it plain to me that he had changed his mind about the whole suicide issue.

Q: And you believed him?
A: Absolutely.

Q: And you don't want to believe, even now, that there is any possibility that he was deceiving you when he said that, do you?
A: I don't believe that he would deceive me.

Q: No further questions Your Honour.

No re-examination

Witness retired and excused.

Defence Case:

Defence Witness 1: Jane Mitchell

Examination in Chief:

Defence Counsel: Please state your full name for the record.
A: My name is Jane Mitchell.

Q: Jane, when did you find out that Stephen was terminally ill?
A: About two years ago. I became Stephen's full time carer when he couldn't do things for himself anymore.

Q: Let's talk about the birthday party you had for Stephen. Who attended the party?
A: Our friends and his daughter, Christine.

Q: When did the guests leave?
A: Umm, maybe around six?

Q: And what happened then?
A: Stephen wanted to go to bed, so I took him upstairs and helped him into bed, and I gave him his regular night-time dose of Valium. The Valium was on the bedside table, and I just administered his regular dose like I always do.

Q: Stephen wrote a letter to his daughter a few weeks prior to the birthday party, didn't he?
A: Yes, Stephen wrote the letter just before Christine came back to Australia, and I printed it out for him. After I had printed it, Stephen asked me for the letter and he signed it.

Q: Now, tell us a little about your dealings with the Exit group.
A: Well, after Stephen had made his decision to end his life on his own terms, he and I discussed his options, and we looked into various groups or organisations which might be able to help us. We came across the Exit group on the internet, and Stephen asked me to arrange a visit and I did. They came over, and we had an in depth chat about Stephen's options.

Q: And was one of the options discussed the possibility of overdosing on prescription medication?

A: Yes. For people in Stephen's position, it is an obvious possibility, which allows him to take control himself, without involving anyone else.

Q: And when you put Stephen to bed on the night in question, where was the Valium?
A: It was on the bedside table.

Q: And you told the police that you couldn't remember whether you had screwed the lid on tightly, or if you had just placed it on top of the bottle, is that right?
A: Yes, I…I just can't remember if I did it up properly or not.

Q: Tell us in your own words, what happened next?
A: Stephen asked me to leave the room, and I did. I went back downstairs, and started to tidy up the mess left from the party; picking up glasses, washing up, dealing with the leftover food and such. About an hour or so later, I went back up to Stephen's room to check on him, and that's when I found him…

Q: And what did you observe?
A: Stephen appeared to be dead, as far as I could tell; he had no pulse.

Q: The Valium bottle was found on the floor. How did it get there?
A: I have no idea; when I left the room, it was sitting on the bedside table, where it always is.

Q: What happened next?
A: I made all the necessary calls: firstly to Christine, and also to Dr Greene.

Q: When Christine arrived, what happened?
A: We went into the bedroom. And when she realised he was dead she broke down into tears and that's when I just gave her the letter.

Q: So, Jane, let's just confirm; at no point, from inside or outside Stephen's bedroom, did you observe Stephen taking more Valium, or doing anything to suggest he was trying to take his own life?
A: Absolutely not. He asked me to leave the room, which I did. When I left the room he was in bed, and alive. When I returned an hour or so later, he was dead.

Q: Thank you. No further questions your Honour.

Cross Examination:

Crown Prosecutor: Ms Mitchell, the doctor alleges that Stephen was not capable of opening the Valium bottle without the help of someone else. What do you say about that?
A: I don't know what to say to that, except that I just didn't help him.

Q: And isn't it also true that Stephen wanted to alter his Will in a week or so to increase his bequest to Christine's Church, therefore decreasing the size of the estate left to you?
A: Yes. It was Stephen's Will. He could do whatever he wanted with it.

Q: You understand that the business becomes yours alone on his death?
A: Yes.

Q: It's a fairly profitable business, isn't it?
A: Yes, it is.

Q: The pathology report conducted indicates that at the time of the deceased's death, he had a blood/alcohol level of 0.08. That's quite a high amount of alcohol, wouldn't you agree?
A: I suppose so.

Q: The pathologist's report also indicates a very high level of Valium - 6.9 mg/ltr. How do you think this was so high if you only administered the usual night-time dose?
A: I don't know; I guess Stephen took more tablets after I left the room

Q: No further questions.

Closing Statements:

Defence Counsel: Thank you, Your Honour. Ladies and gentlemen: one very quick glance at this case quickly demonstrates that there are numerous gaps in the evidence; let me point some of these out for you. Number 1: the medical evidence as to what Mr Taylor was physically capable of is inconclusive to say the least. Not one of the witnesses was able to say with any certainty that Mr Taylor would not have been able to undo the pill bottle. In addition, you must also consider the fact that the deceased may not have had to undo the pill bottle himself, as the evidence is unclear as to whether the lid was screwed on tightly or possibly just sitting on top of the bottle. In the latter case, then, the deceased would have had to expend very little energy to succeed in his wish to suicide. Number 2: the Crown have suggested that Mr Taylor changed his mind about his very strong wish to commit suicide, however, they cannot explain why then, Mr Taylor kept a copy of the goodbye letter to his daughter, or why he kept the video explaining his desire to suicide. And number 3, the Crown have not produced a shred of evidence to suggest that Ms Mitchell remained in the room with Mr Taylor as he ended his life, and if she was not present, it is difficult to imagine how Ms Mitchell can be convicted of anything. All of this evidence is so inconclusive, it simply cannot be relied upon to prove anything beyond a reasonable doubt.

When this complete lack of evidence is considered in combination with the fact that the accused is a woman without any previous criminal record, and who has been a faithful and caring partner who has had to watch her lover deteriorate mentally and physically before her eyes, it is very difficult to imagine that anyone could be convinced of either of these charges beyond a reasonable doubt. Quite simply, the prosecution has failed to prove either the charge of murder, that of manslaughter, or the charge of instigating or aiding suicide beyond a reasonable doubt, leaving you with no choice other than to find Ms Mitchell not guilty on all counts. Thank you.

Crown Prosecutor: Thank you, Your Honour. Ladies and gentlemen of the jury. What you have heard here today is the story of a murder. Despite what Mr Wilson has tried to suggest, I'm sure you can see that the hard evidence in this case paints a

very different picture. The medical evidence clearly proves beyond a reasonable doubt, that the accused intentionally caused the death of the deceased. Although the accused and the deceased had discussed the possibility of suicide, you have heard evidence that Mr Stephen Taylor changed his mind, that he no longer wished to end his own life. You have also heard medical evidence that Mr Taylor's ability to perform complex motor tasks like unscrewing the lid of a pill bottle was severely impaired, so much so, that it seems ridiculous to imagine a man who is suffering at the later stages of Motor Neurone Disease and who has had a fair amount of whiskey, being able to voluntarily ingest somewhere between 20 and 40 tablets. According to that evidence then, you must conclude that since Mr Taylor was unable to accomplish this himself, someone must have helped him, and all the evidence points to that someone being the accused – Ms Mitchell. If this alone is not convincing enough, do not forget that Ms Mitchell was the principle beneficiary under Mr Taylor's Will, and would become a wealthy woman following Mr Taylor's death. If you accept this evidence beyond reasonable doubt, you must convict the accused of murder. If, however, you are not convinced beyond a reasonable doubt that the accused murdered the deceased, if you are not convinced that she forced Mr Taylor to ingest the Valium with the intention of causing his death, you can convict the accused of the alternative charge of manslaughter. To do that, you simply need to be satisfied that the accused committed an act which was either intended to cause bodily harm or death, or which is commonly known to be likely to cause death or bodily harm. I don't think it is much of a stretch to consider that administering someone with 20 to 40 tablets of a drug in one go (compared to their usual dose of one or two tablets a day), is something that is commonly known to be likely to cause death or bodily harm. It is also important for you to remember that even if Mr Taylor asked the accused to give him 20 to 40 tablets of Valium, this does not change anything; you can still convict Ms Mitchell of manslaughter.

In the instance that you are not convinced beyond reasonable doubt that the accused is guilty of murder or manslaughter, you must, at the very least, be convinced that the accused instigated or aided Mr Taylor to suicide. It is very important for me here to emphasise that no matter what you believe about euthanasia or assisted suicide, you must put it aside to make your decision; it is a crime to assist someone to suicide, just as it is a crime to murder someone – that is what you must remember when making this decision. Once again, the medical evidence clearly shows that Mr Taylor was incapable of undoing the pill bottle on his own – he must have had some physical assistance, and that assistance must have come from the accused. Therefore, by helping Mr Taylor take his own life, by assisting him with something he was physically incapable of doing himself, that is, undoing the pill bottle, the accused has clearly aided Mr Taylor's suicide. Of that, there is no question. I therefore urge you to come to the obvious conclusion: that if the accused is not a murderer, she is at the very least guilty of instigating or aiding suicide. Thank you.

Judge's summing up.

His Honour: Members of the jury, the final statement of this trial is when I give you some directions about the law. It is my role to determine what the law is in this case, and explain it to you, but it is your role as jury members to decide the facts of the case and apply the law to determine if the accused is guilty or not. I must tell you again briefly, because the prosecution charges the accused, it is its obligation to prove the charge against the accused. It does not have to prove every little fact it alleges but it must prove the essential ingredients of each charge

The fact that the accused was charged does not mean anything; she is presumed to be innocent. So the presumption of innocence is in her favour. She need not prove anything, she need not disprove anything. The standard or the level of proof to be achieved by the prosecution in this case is beyond reasonable doubt. It is the highest standard of proof known to the law.

It is important for you throughout your deliberations to focus purely on the intellectual task of drawing conclusions from the evidence you have heard. It is an intellectual task, not an emotional one. That is hard to do in this sort of case but it is something that is very important.

Now, I want to tell you something about the elements of the crime of murder. Murder is committed when a person kills another by conscious, voluntary and deliberate act done with intent at the time to kill this person. So, in order to prove murder, an act which is directly and immediately connected with the deceased's death, and which can therefore be identified as the cause of death, must first be established. The expert pathology evidence in this case pointed to depression of brain and organ function as a result of the Valium overdose as the cause of death, so the relevant act here would be administering the Valium tablets.

The matters which you must be satisfied of beyond reasonable doubt, in addition, are that the accused herself actually committed this act. And also, that the accused committed this act with the intention of causing death to the deceased. That is, the accused must have had in mind, or had the purpose or design to cause death at the time of committing the relevant act. So, in summary, in order to find the accused guilty on the charge of murder, an act which caused the deceased's death must first be established. That has been established in this case. You must then be convinced beyond a reasonable doubt first of all that the accused actually committed this act which caused death, and secondly, that the accused committed this act with the intention of causing death.

Now we come to the second charge. This is where things get quite complex, because the law in relation to this second charge is extensive, and quite difficult. The second charge is an alternative charge and that is the count of manslaughter. This is an option available to you if you believe that the accused administered the large dose of Valium to the deceased, but that she did so with no intention of bringing about his death. So, in order to convict the accused of manslaughter, again, an act which caused Stephen Taylor's death must first be established. That has been established in this case. You must also be convinced of one of two things: either that the accused did this act, intending to cause death or bodily harm, or that the accused's act (in this case, administering a large dose of Valium, between 20-40 tablets) is an act which is

commonly known to be likely to cause death or bodily harm. For the purpose of these requirements, bodily harm is defined as any hurt or injury calculated to interfere with health or comfort. It need not be permanent, but it must be more than transient or trifling. That is, it must be more than an injury which is brief, momentary or fleeting, and it must be more than an insignificant or petty injury. In summary, the words bodily injury do not refer to an injury of a very minor degree which causes a very minor degree of distress and lasts only a short period; it must be more than that.

So, if you are convinced that the accused did this act, intending to cause death or bodily harm as I have just described it, you must find her guilty of manslaughter.

Alternatively, if you find that the accused's act was commonly known to be likely to cause death or bodily harm as I have just described it, you must find her guilty of manslaughter. To determine whether the relevant act is something which is commonly known to be likely to cause death or bodily harm, you must consider not what the accused herself knew, but rather, what a reasonable person would know as a matter of common knowledge. It is an objective test. If something is likely to cause death or bodily harm, that means there is a real and not remote chance that it will cause death or bodily harm. So if the accused's act is something which a reasonable man with common knowledge would know to have a real chance of causing death or bodily harm (an injury which need not be permanent, but must be more than transient or trifling), you must find the accused guilty of manslaughter.

I must make a point for you here, that if you are imagining a situation where Mr Taylor asked the accused to administer him that dose of Valium, it is not open for you to find that such a request justifies the accused's act of administering the drug. According to the law, no person can consent to their own death.

The final alternative you have open to you is the count of instigating or aiding suicide. To convict on this charge, the matters that you have to be satisfied of beyond reasonable doubt are as follows: The first obviously is that the deceased committed suicide. The next question is, in that act did the accused instigate or aid him? To instigate or aid in this context means she did one of the following things:

Either she in some way actually helped him to do it, to do what the deceased was doing that evening he committed suicide or, she intentionally encouraged him to do it, or she intentionally expressed her agreement and support for it, or she intentionally commanded him to do it.

Now, the important aspect of all that is that the law requires that for any of those positions, the accused must have been present at the time when the acts which caused the suicide were being committed, not some other time. So, for example, the fact that they somehow talked together about suicide previously and so on, all that is just the setting in which this occurs. The real question for you on this charge is firstly, was there suicide? Then, to prove that the crime of instigating or aiding suicide has been committed, the prosecution must prove beyond reasonable doubt first, that the accused was present, physically present at the time when the acts which resulted in suicide were being committed, not necessarily at the time of death, but at the time when the acts were committed. And if she was present then you have to consider what she did, and she has got to be proved to have done one of these three things;

intentionally help, intentionally encourage by words or conduct, or express her agreement and her support.

I think that probably covers all the aspects of the law that you need to know in relation to these particular charges. Thank you. You may retire.

Chronology of events.

1st February 2002:	Dr Greene's visit. First knowledge of peaceful death intentions.
30th April 2002:	Date of Stephen Taylor's will.
2nd May 2002:	"Attesting video" and farewell letter to Christine created.
5th July 2002:	Dr Greene's visit. Immobility assessed.
10th July 2002:	Jane Mitchell calls Sister Christine in Dublin.
15th July 2002:	Sister Christine to Sydney.
18th July 2002:	Stephen talks to Christine of suicide plans.
21st July 2002:	Stephen tells Christine he rejects suicide plans.
26th July 2002:	Stephen plans party.
2nd August 2002:	Party.

Offence criteria.

Instigating or Aiding Suicide:

s163 of the Tasmanian Criminal Code states that: Any person who instigates or aids another to kill himself is guilty of a crime.

In order to prove the crime of instigating or aiding suicide (under s163 of the Tasmanian Criminal Code), the Crown must prove each of the following beyond a reasonable doubt:

4. That the deceased committed suicide.

5. That the accused was present at the time when the act(s) which resulted in suicide was being committed.

6. That the accused intentionally helped the deceased carry out these acts

   OR

   That the accused intentionally encouraged suicide by words or conduct

   OR

   That the accused expressed his agreement and support of the acts which resulted in suicide

   OR

   That the accused intentionally commanded the acts which resulted in suicide

Where each of the above elements can be proven beyond a reasonable doubt, the accused can be convicted of the crime of instigating or aiding suicide, under s163 of the Tasmanian Criminal Code.

Murder:

s157(1)(a) of the Tasmanian Criminal Code states that: Culpable homicide is murder if it is committed with an intention to cause death of any person, whether of the person killed or not.

In order to prove the crime of murder (under s157(1)(a) of the Tasmanian Criminal Code), the Crown must prove each of the following beyond a reasonable doubt:

5. That an act which is the cause of death, and which is directly and immediately connected with the death of the deceased can be established.

6. That the accused's act was conscious and voluntary.

7. That the accused was responsible for this act.

8. That the accused committed this act with the intention of causing the deceased's death.

Where each of the above elements can be proven beyond a reasonable doubt, the accused can be convicted of the crime of murder under s157(1)(a) of the Tasmanian Criminal Code.

Manslaughter

In order to prove the crime of manslaughter (under s156(2)(a) of the Tasmanian Criminal Code), the Crown must prove each of the following beyond a reasonable doubt:

1. That an act which is the cause of death, and which is directly and immediately connected with the death of the deceased can be established.

2. That the accused's act was conscious and voluntary.

3. That the accused was responsible for this act.

4. That the accused committed this act, intending to cause death or bodily harm, and that the act was not justified under the provisions of the Code

OR

That the accused's act is commonly known to be likely to cause death or bodily harm, and is not justified under the provisions of the Code.

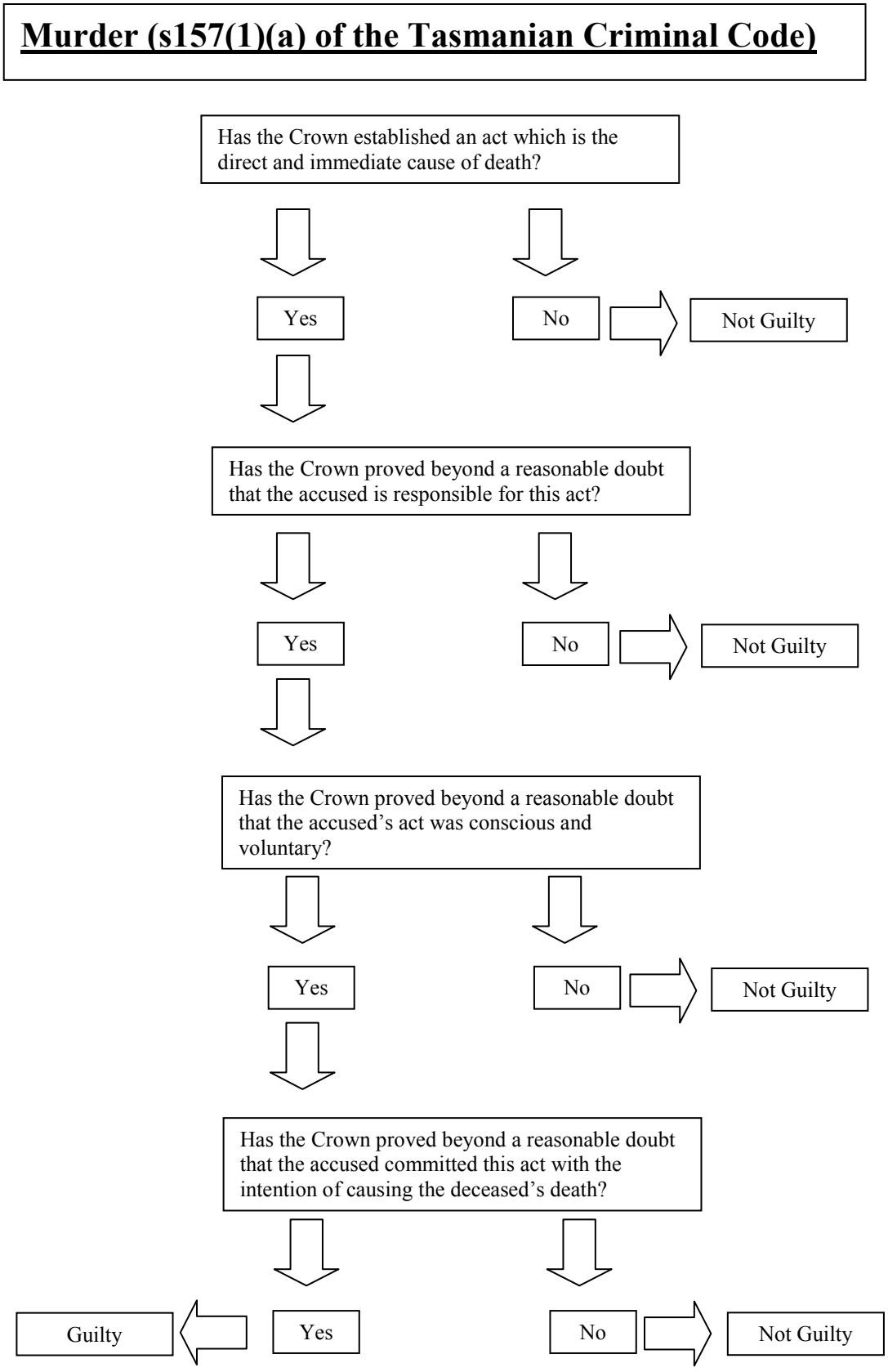
For the purpose of this section of the Code:

'bodily harm' refers to any hurt or injury calculated to interfere with health or comfort. It need not be permanent, but it must be more than transient or trifling.

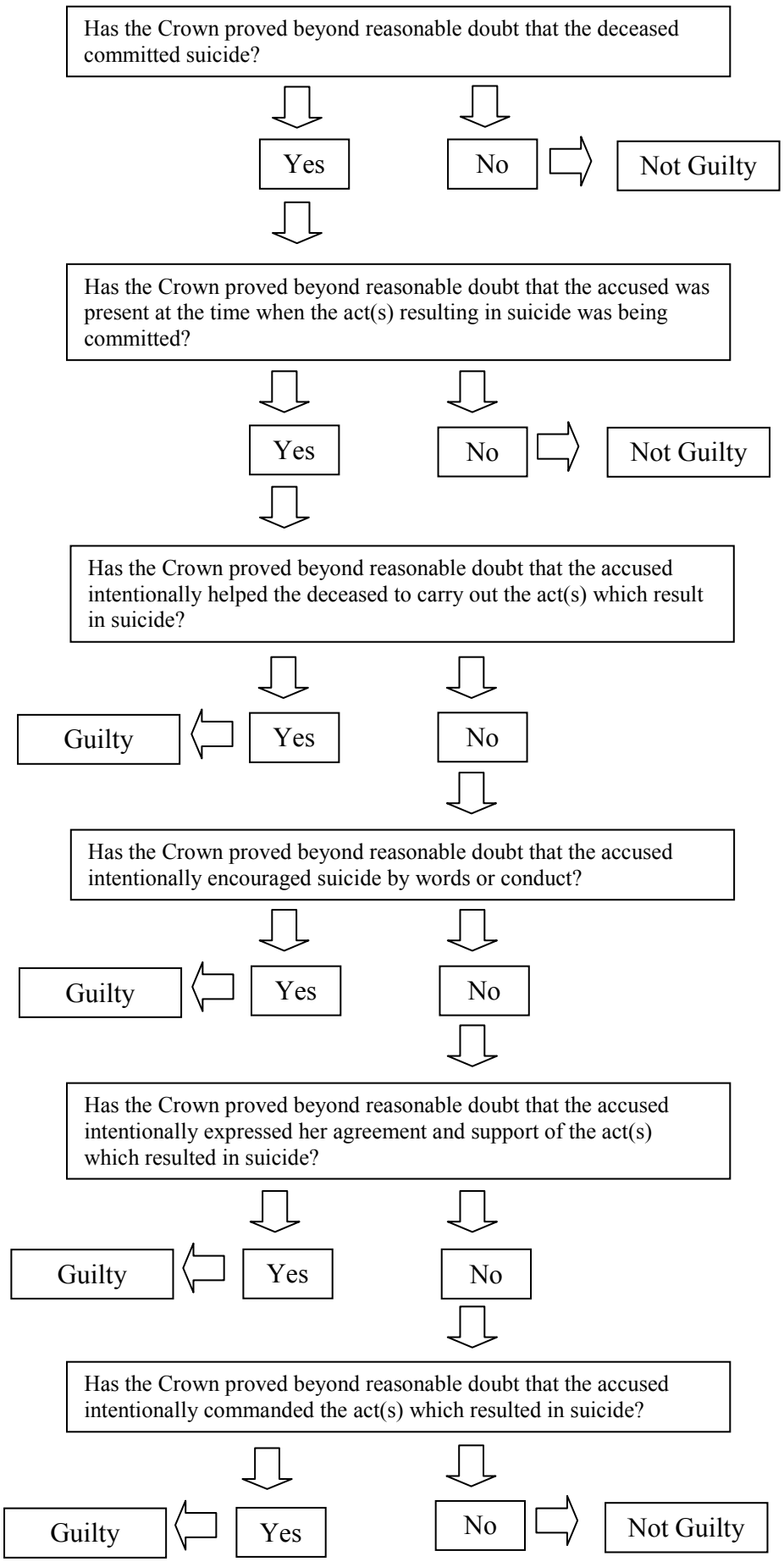
'likely' means a real and not remote chance; a substantial or real chance, as distinct from a mere possibility

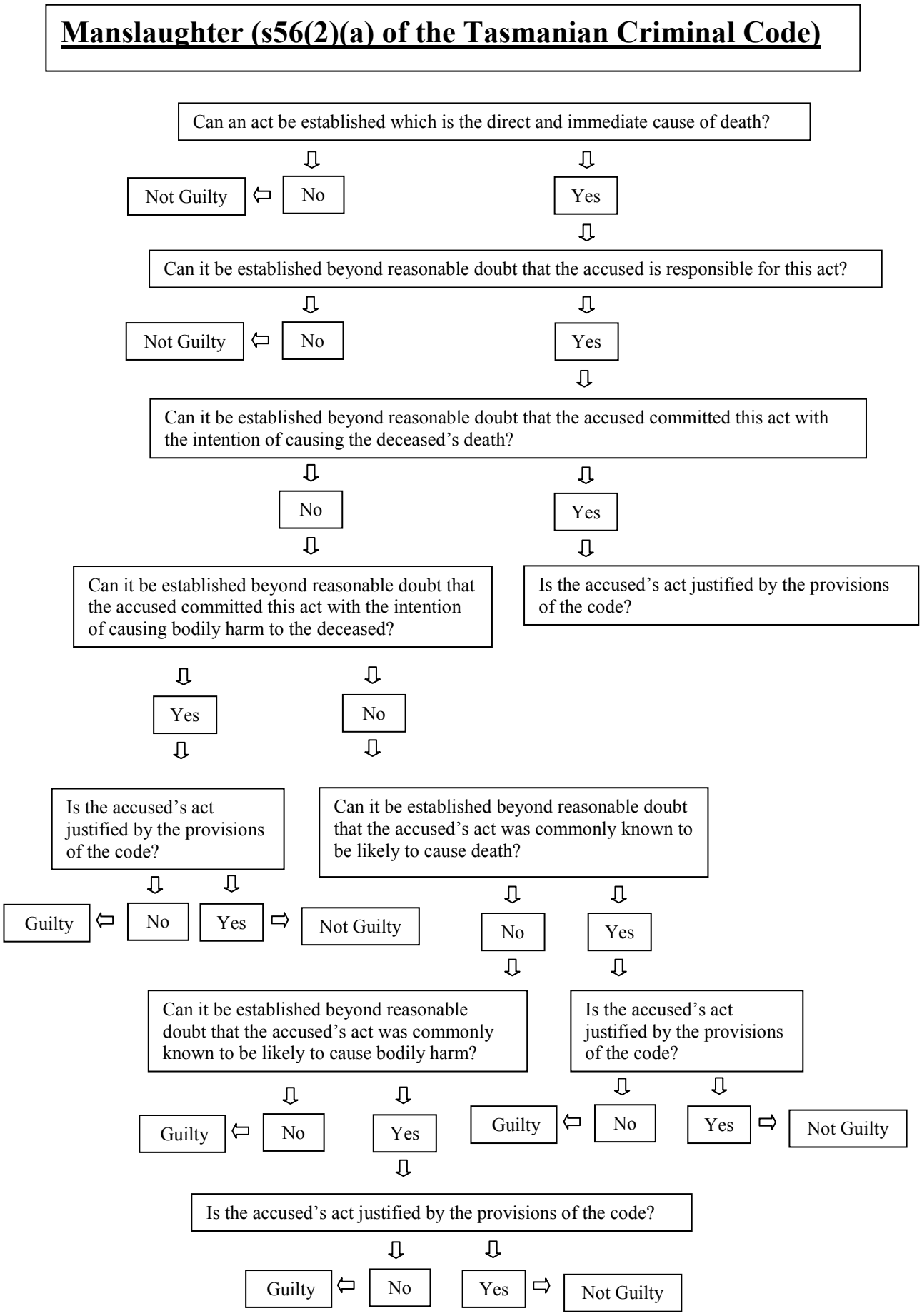
Where each of the above elements can be proven beyond a reasonable doubt, the accused can be convicted of the crime of manslaughter under s156(2)(a) of the Tasmanian Criminal Code.

Verdict Flowcharts



Aiding or Instigating Suicide (s163 of the Tasmanian Criminal Code)




Manslaughter (s56(2)(a) of the Tasmanian Criminal Code)
Can an act be established which is the direct and immediate cause of death?
No
Not Guilty
Yes
Can it be established beyond reasonable doubt that the accused is responsible for this act?
No
Not Guilty
Yes
Can it be established beyond reasonable doubt that the accused committed this act with the intention of causing the deceased's death?
No
Yes
Can it be established beyond reasonable doubt that the accused committed this act with the intention of causing bodily harm to the deceased?
Is the accused's act justified by the provisions of the code?
Yes
No
Is the accused's act justified by the provisions of the code?
Guilty
No
Yes
Not Guilty
Can it be established beyond reasonable doubt that the accused's act was commonly known to be likely to cause death?
No
Yes
Can it be established beyond reasonable doubt that the accused's act was commonly known to be likely to cause bodily harm?
Is the accused's act justified by the provisions of the code?
Guilty
No
Yes
Guilty
No
Yes
Not Guilty
Is the accused's act justified by the provisions of the code?
Guilty
No
Yes
Not Guilty

Appendix R

Experiment 4 Participant Instructions

Own notes conditions.

Before the Trial:

What you will be seeing today is a film of a mock criminal trial. In this film, the characters are played by ordinary people, but the facts are based around a real criminal trial which occurred in New South Wales in recent years. To make the film as short as possible, some procedural details have been left out (for example, you will not see each of the witnesses get sworn in), and the trial has been edited in places.

The film goes for (XX)[15] minutes. After you have seen the trial, you will not be given a chance to deliberate as a group, but will be required to reach a verdict as an individual, and to answer some written questions about the facts and law of the case.

You are allowed to make as many notes as you like throughout the trial, using the materials provided, and you will be able to use these notes to help you answer the questions and reach your verdict.

After the Trial:

Before I hand around the questionnaire, please take 5 minutes to review the material you have recorded in your notes.

After 5 mins...

Now that you have seen the trial, I will hand out some questions regarding the facts and law of the case for you to answer. These are multiple choice questions, so all you are required to do is circle the correct option. Please work through these questions on your own, without discussing them with anyone. Please use the notes you have taken to help you arrive at the right answers. When you think you have finished, let me know.

Now that I have handed out the questionnaire, could you please make sure you have recorded your age and sex in the space at the top. The questionnaire has a number of different sections, and the pages are double-sided, so make sure you don't accidentally skip anything.

Provided notes conditions.

Before the Trial:

What you will be seeing today is a film of a mock criminal trial. In this film, the characters are played by ordinary people, but the facts are based around a real criminal trial which occurred in New South Wales in recent years. To make the film

[15] Estimated length altered to reflect the duration of the corresponding complexity type.

as short as possible, some procedural details have been left out (for example, you will not see each of the witnesses get sworn in), and the trial has been edited in places.

The film goes for XX minutes. After you have seen the trial, you will not be given a chance to deliberate as a group, but will be required to reach a verdict as an individual, and to answer some written questions about the facts and law of the case.

You are not allowed to make any notes while watching the trial, as this may distract you, but at the conclusion of the trial, you will receive some prepared notes, which you will be able to use to help you reach your verdict and answer the questions.

<u>After the Trial:</u>

I will now hand around the prepared notes. You will each have the same bundle of notes, which includes a copy of a trial transcript, a written copy of the judge's instructions, verdict flow-charts, forms detailing the elements of each offence, and a chronology of events. These are all clearly labelled, and all pages are double-sided. Could I also ask you to please not write anything on these provided materials, so that they can be re-used. Before I hand around the questionnaire, please take 5 minutes to review these materials.

After 5 mins...

Now I will hand out some questions regarding the facts and law of the case for you to answer. These are multiple choice questions, so all you are required to do is circle the correct option.

Now that I have handed out the questionnaire, could you please make sure you have recorded your age and sex in the space at the top. The questionnaire has a number of different sections, and the pages are double-sided, so make sure you don't accidentally skip anything. Please work through these questions on your own, without discussing them with anyone. When you think you have finished, let me know.

Appendix S

Experiment 4 Scenario Analyses

Between-Subjects Factors

		Value Label	*n*
Complexity Type	1	Control	30
	2	Evidence	30
	3	Legal	30
	4	Length	30
Note Type	1	Own Notes	60
	2	Provided Notes	60

Descriptive Statistics

Complexity Type	Note Type	*M*	*SD*	*n*
Control	Own Notes	7.8667	2.06559	15
	Provided Notes	7.3333	2.19306	15
	Total	7.6000	2.11073	30
Evidence	Own Notes	6.3333	2.09307	15
	Provided Notes	8.1333	1.76743	15
	Total	7.2333	2.11209	30
Legal	Own Notes	7.2667	1.79151	15
	Provided Notes	6.8000	1.89737	15
	Total	7.0333	1.82857	30
Length	Own Notes	6.3333	1.71825	15
	Provided Notes	7.0000	2.07020	15
	Total	6.6667	1.89979	30
Total	Own Notes	6.9500	1.98661	60
	Provided Notes	7.3167	2.00416	60
	Total	7.1333	1.99551	120

Multivariate Tests (Test = Wilk's Lambda)

Effect	Value	*F*	Hypothesis df	Error df	Sig.	Partial Eta Squared
Intercept	.023	1.591E3	3	110	.000	.977
Complexity Type	.858	1.931	9	267.86	.048	.050
Note Type	.333	73.412[a]	3	110	.000	.667
Complexity Type * Note Type	.902	1.285	9	267.86	.245	.034

Tests of Between-Subjects Effects

Source	Type III Sum of Squares	df	Mean Square	*F*	Sig.	Partial Eta Squared
Corrected Model	45.067	7	6.438	1.682	.121	.095
Intercept	6106.133	1	6106.133	1594.886	.000	.934
Complexity Type	13.667	3	4.556	1.190	.317	.031
Note Type	4.033	1	4.033	1.053	.307	.009
Complexity Type * Note Type	27.367	3	9.122	2.383	.073	.060
Error	27.367	3	9.122	2.383	.073	.060
Total	6580.000	120				
Corrected Total	473.867	119				

Provided Notes as an Alternative to Juror Notetaking: The Effects of Deliberation & Trial Complexity

by

Erin L. Kelly, BA (Hons)

Appendices

List of Appendices*

*To facilitate economy of presentation, the format of some of the materials included in the appendices has been altered, and some materials are reproduced two sheets per page.